

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

<b>ROBERT QUILL,</b>	:	
	:	
<b>Plaintiff,</b>	:	
	:	
<b>v.</b>	:	<b>C.A.No. 07-435-SLR</b>
	:	
<b>CATHOLIC DIOCESE OF WILMINGTON,</b>	:	
<b>INC., a Delaware corporation; ST.</b>	:	
<b>ELIZABETH'S CATHOLIC CHURCH, a</b>	:	
<b>Delaware corporation; Rev. FRANCIS G.</b>	:	
<b>DELUCA, individually and in his official</b>	:	
<b>capacity; and Rev. MICHAEL A.</b>	:	
<b>SALTARELLI, in his official capacity,</b>	:	
	:	
<b>Defendants.</b>	:	

**APPENDIX TO PLAINTIFF'S OPENING BRIEF IN SUPPORT OF HIS RULE 12(c)  
MOTION FOR PARTIAL JUDGMENT ON THE PLEADINGS, AND/OR RULE 56(a),  
(c) AND (d) MOTION FOR PARTIAL SUMMARY JUDGMENT, ON THE  
CONSTITUTIONALITY OF THE CHILD VICTIM'S ACT AS WRITTEN UNDER THE  
U.S. CONSTITUTION  
(A1-A319)**

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FOR THE DISTRICT OF DELAWARE**

<b>ROBERT QUILL,</b>	:	
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<b>Plaintiff,</b>	:	
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<b>v.</b>	:	<b>C.A.No. 07-435-SLR</b>
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<b>CATHOLIC DIOCESE OF WILMINGTON, INC., a Delaware corporation; ST.</b>	:	
	:	
<b>ELIZABETH'S CATHOLIC CHURCH, a Delaware corporation; Rev. FRANCIS G. DELUCA, individually and in his official capacity; and Rev. MICHAEL A. SALTARELLI, in his official capacity,</b>	:	<b>Jury Trial Demanded</b>
	:	
<b>Defendants.</b>	:	
	:	

**FIRST AMENDED COMPLAINT<sup>1</sup>**

1. This is a diversity case arising from the July 10, 2007 enactment of the Delaware Child Victims Act of 2007 (the “Act”) and Delaware common law regarding childhood sexual abuse. It seeks monetary damages for personal injuries arising from childhood sexual abuse by a pedophile Roman Catholic priest. From the age of thirteen to nineteen Robert Quill was the victim of at least 300 acts of sexual molestation by Rev. Francis G. DeLuca, a convicted child molester and priest employed by the defendants. DeLuca was employed recklessly despite the fact that the defendants had prior actual knowledge that he was a child molester and that they owed a duty of care to protect plaintiff from him.

**I. JURISDICTION**

2. The diversity jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 1332, 2201

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<sup>1</sup> No Answer having been filed, pursuant to Fed.R.Civ.P. 15(a), plaintiff amends his Complaint as of right. Minor changes have been made to section III and Count VIII has been added.

and 2202. This case arises between citizens of different States and the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs.

3. Venue is appropriate pursuant to 28 U.S.C. § 1391(a)(2) because a substantial part of the events or omissions giving rise to the claims occurred in this judicial district.

## II. THE PARTIES

4. Robert Quill ("plaintiff") resides in Marathon, Florida and is a citizen of that State. He is presently 52 years old. He was last employed as a Supervisory Staff Attorney for the United States Court of Appeals for the Eleventh Circuit, in Atlanta, Georgia. At the times he was sexually molested and victimized, he ranged from ages thirteen to nineteen.

5. Defendant Catholic Diocese of Wilmington, Inc. ("Diocese") is a Delaware corporation, file number 0787107. It serves as its own registered agent at 1626 N. Union St., Wilmington, DE 19806. It is authorized to do business and is doing business in the States of Delaware and Maryland as a Roman Catholic religious enterprise.

6. On information and belief, defendant St. Elizabeth's Roman Catholic Church ("St. Elizabeth's"), is a Title 27 or a Title 8 Delaware Corporation located in Wilmington, DE, which operates under the auspices of defendant Diocese. It is authorized to do business and is doing business in the State of Delaware as private religious institution, operating both a church and elementary and high school, each of which plaintiff attended.

7. Defendant Francis G. DeLuca ("DeLuca") is a Roman Catholic priest. He was employed by the Diocese from 1958 until 1993. He is a convicted child molester. He is presently 77 years old and resides at 100 Pastime Drive, Syracuse, New York. He is a citizen of Delaware. He is sued in his official and individual capacities.

8. DeLuca was the assistant pastor at St. Elizabeth's as well as a staff member and religion teacher at the St. Elizabeth's elementary and high schools from 1966 to 1969 where he sexually abused numerous young male parishioners in addition to plaintiff.

9. Defendant Rev. Michael A. Saltarelli ("Saltarelli") is currently employed as the Roman Catholic Bishop of the Diocese. He is sued only in his official capacity as agent or alter ego of the Diocese for purposes of collecting a money judgment against the Diocese, should its assets be titled in his name. He is a citizen of Delaware.

10. Diocese was responsible at all times for licensing DeLuca to perform priestly functions as one of its employees. Without the explicit authorization and sanction of Diocese, he could not have performed priestly functions including spiritual and personal counseling, the conduct of religious services, days of spiritual recollection, and the administration of Roman Catholic sacraments.

11. At all times relevant hereto, Diocese was responsible for the management and control of its parishes, including St. John the Beloved, St. Elizabeth's, Holy Spirit and St. Matthew's, and was responsible for employing priests, staff and other agents to operate those parishes.

12. At all times relevant hereto, Diocese had actual or constructive knowledge of prior criminal conduct by DeLuca where he sexually abused young boys. For example, Diocese was notified by Mike Schulte and his family that he had been abused by DeLuca while assigned to St. John the Beloved Parish in Wilmington, DE in the early 1960s before he was transferred to St. Elizabeth's Parish in 1966 where he abused plaintiff for years.

13. Diocese and St. Elizabeth's also had actual or constructive knowledge of the childhood sexual abuse which was being committed upon plaintiff by DeLuca.

14. DeLuca's misconduct also was authorized, sanctioned, ratified, acquiesced in or approved by Diocese and St. Elizabeth's. All his acts were taken within the scope of his authority and for the benefit of Diocese and St. Elizabeth's during the normal course of his routine and regular job duties.

### **III. FACTS GIVING RISE TO THE ACTION**

#### **A. Institutional Knowledge of Clergy Sexual Abuse Leading to the Underlying Gross Negligence**

15. As was recently admitted under oath by Monseigneur Thomas Cini, the Vicar General for Administration of the Diocese, the Diocese, the Roman Catholic Church, and by implication St. Elizabeth's, have been aware of the serious problem of clergy sexual abuse of children since at least the early 1800s.

16. In 1917 section 1395 of Canon Law was formally enacted for all Roman Catholic priests and it punished clergy sexual abuse of children.

17. The current codification of Canon Law enacted in the 1980s reenacted this prohibition and carried forth this duty to protect children.

18. The Diocese, St. Elizabeth's and the Roman Catholic Church have been aware of the serious problem of clergy sexual abuse of children throughout their history, and even long before the early 1800s.

19. Canon law records, dating back to the 4th century, reveal a consistent pattern of attempts by Church leadership to deal effectively with clergy sexual abuse.

20. In the era when regional conferences of bishops met to enact legislation, there is regular mention of laws and canons which were enacted to punish clerics whose offenses were

the sexual abuse of youths.

21. Between the 15th and 17th centuries, Roman Catholic Church courts would often put a child abuser on trial, defrock him and turn him over to the civil authorities for prosecution and punishment, including death.

22. There is evidence that in monasteries in the medieval period, clerics who sexually abused children were inflicted with severe physical punishments amounting to imprisonment and life-long restriction and monitoring, even after a sentence of strict confinement had been served.

23. In the 11th century, a book entitled “Book of Gomorrah” was written by Cardinal, and later St. Peter Damian, which was devoted entirely to exposing and providing suggested remedies for clergy sexual abuse.

24. The Roman Catholic Church made other attempts at curbing the sexual abuse of children, including specific canons or laws, regulating and disciplining abusers, which were enacted at synods or gatherings of bishops.

25. The Pope also acknowledged the clergy sexual abuse problem in public documents such as “Horrendum est” (August, 1568), which declared that priests who sexually abused children were to be deprived of all sources of income, degraded or evicted from the clerical state, and turned over to secular authorities for additional punishment.

#### **B. Institutional Secrecy Regarding Clergy Sexual Abuse Leading to the Underlying Gross Negligence.**

26. However, Diocese, St. Elizabeth’s and the Roman Catholic Church changed course and for at least the last 60 years have handled reports of clergy sexual abuse with extreme secrecy.

27. Diocese, St. Elizabeth's and Roman Catholic Church authorities often use tactics with victims and their families to coerce or intimidate them from disclosing the abuse or filing a lawsuit.

28. Diocese, St. Elizabeth's and Roman Catholic Church authorities often transfer perpetrators from one assignment to another, without telling the incoming assignment of the priest's past history of child abuse.

29. Secrecy also was enabled by the fact that child abuse victims are often afraid that by saying anything negative about a priest they are sinning and will be punished by God.

30. When they are molested, victims are told the abusive sexual act is God's will for them and God has chosen their priest to initiate them into secrets of sexual love. DeLuca regularly incorporated religion into his sexual abuse and used his position as a priest as a means to force himself on minor children, including plaintiff. For example, sometimes he would sexually abuse and molest plaintiff while purportedly praying or engaging in spiritual discussions which was part of his job duties as a priest.

31. In 1962 the Vatican also issued a secret document - *Crimen Sollicitationis* - which outlined the rules to be followed in the Church's processing of cases where priests were accused of solicitation of sex in the confessional. Title V of this document governs other clergy sexual crimes such as having sex with a minor and bestiality. This document included regulations that placed everyone who dealt with such cases under the Secret of the Holy Office, the highest degree of Vatican secrecy. Violation of the promise to keep knowledge of such a case secret resulted in automatic ex-communication, which could only be absolved by the Pope. This document remained in force until 2001 and is an example of the extreme secrecy surrounding

clergy sexual abuse followed by Diocese, St. Elizabeth's and the Roman Catholic Church.

32. Records regarding clergy sexual abuse of children are also kept top secret.

33. Canon Law (cc.486-488) states that every Diocese must maintain a secret archive in which the instruments and writings pertaining to the spiritual and temporal affairs of the Diocese are kept.

34. There is also a secret archive in every Diocese where more sensitive materials are kept. (cc.489-490). It is in this secret archive that information regarding sexual misconduct of DeLuca and other clergy are housed. Such documents held in the secret archive are only available to the bishop and the chancellor.

35. The long history of child sexual abuse by priests since the 4<sup>th</sup> Century and recent efforts at secrecy about such abuse prove that at all times, Diocese and St. Elizabeth's were on notice of the threat of injury to children from its clergy such as Smith.

#### **C. DeLuca's History of Pedophile Sexual Molestation and the Underlying Intentional and Negligent Tort Claims**

36. From 1958 and throughout his tenure in Delaware, Diocese and St. Elizabeth's had actual and constructive knowledge that DeLuca was sexually molesting young male children, such as plaintiff.

37. On information and belief, from 1958 forward, Diocese knew that DeLuca was sexually abusing young boys and it continued to allow him to serve as a priest for a generation.

38. Diocese and St. Elizabeth's knew DeLuca was sexually abusing young boys in 1966.

39. Diocese and St. Elizabeth's had a duty, arising from the licensing and employment of DeLuca to operate as a priest, to ensure that he did not sexually molest young male children

when he operated as a priest, confidant, counselor or teacher in homes, hospitals, parishes, schools and churches.

40. Diocese and St. Elizabeth's had a duty arising from the special relationship that existed with plaintiff's parents and other parents of young, innocent, vulnerable children who attended St. Elizabeth's Roman Catholic Church, its elementary and high schools, as well as other parishes and schools in the Diocese. This special relationship arose because of the high degree of vulnerability of the children entrusted to its care. As a result of this high degree of vulnerability and risk of sexual abuse inherent in such a special relationship, Diocese and St. Elizabeth's had a duty to establish measures of protection not necessary for persons who are older and better able to safeguard themselves. Such measures included, *inter alia*, prohibiting unsupervised contact between a child and an employee or agent, conducting background checks and not knowingly putting a child molester into a room full of vulnerable children, and other reasonable measures.

41. Diocese and St. Elizabeth's also had a duty, arising from their actual knowledge that DeLuca was a child molester and pedophile, to ensure that he was not in a position to molest young male minors or any other children. They also had a duty to use reasonable care to protect and supervise the children in their care, and plaintiff.

42. In breach of these duties, DeLuca repeatedly sexually molested numerous young male children, including plaintiff and others, some of whose names have been publicized subsequently in the Wilmington News Journal and elsewhere, when he operated in Delaware as agent for Diocese and St. Elizabeth's.

43. Diocese has publicly admitted that DeLuca sexually molested and abused young male

children parishioners since at least 1962.

44. DeLuca intentionally and without plaintiff's consent caused plaintiff repeatedly to be in fear of immediate harmful or offensive physical contacts by DeLuca.

45. DeLuca intentionally and without plaintiff's consent repeatedly made unpermitted physical contact with plaintiff in a harmful and offensive way. These contacts would offend an ordinary person's reasonable sense of personal dignity, and it repeatedly offended plaintiff.

#### **D. Agency**

46. At all times relevant hereto DeLuca was a priest employed by the Diocese and St. Elizabeth's to operate in their homes, hospitals, parishes, schools and churches. Without Roman Catholic Church, Diocesan, and St. Elizabeth's approval he could perform no sacerdotal functions or function as a priest in any manner whatsoever.

47. DeLuca was at all times a licensed priest of Diocese which was responsible for employing, licensing, and supervising him.

48. At all times and in all matters relevant hereto, Diocese and St. Elizabeth's were the principals of their agent DeLuca. Diocese and St. Elizabeth's manifested an intention that DeLuca become their agent and act on their behalf. DeLuca was empowered by Diocese and St. Elizabeth's to perform duties and functions undertaken on behalf of Diocese and St. Elizabeth's. DeLuca accepted and consented to serve and act on their behalf as their agent. DeLuca consented to be subject to Diocese and St. Elizabeth's control.

49. Diocese and St. Elizabeth's gave DeLuca the power to act on their behalf and to produce changes in legal relations by performing or not performing legal acts. They conferred upon DeLuca the authority (express, implied, apparent or inherent) to affect legal relations by

performing acts in accordance with their manifestations of consent. At all times, DeLuca acted within the scope of that consent.

50. All acts, if any, initially done outside the scope of that consent were ratified, affirmed, adopted, acquiesced in, and not repudiated by Diocese or St. Elizabeth's. Such acts were enabled by the agency relationship.

51. DeLuca's actions were of the kind Diocese and St. Elizabeth's expected him to perform. His conduct was not unexpected by Diocese and St. Elizabeth's. His actions occurred substantially within the authorized time and space limits placed upon him by Diocese or St. Elizabeth's. DeLuca was actuated at least in part by a purpose to serve Diocese and St. Elizabeth's.

52. DeLuca was employed by Diocese and St. Elizabeth's, participated in Diocese's retirement plan and retired from Diocese. All his contacts with plaintiff were made pursuant to his routine and regular job duties.

#### **E. Fiduciary Relationships**

53. Fiduciary relationships existed between plaintiff and his parents on the one hand, and DeLuca, Diocese, and St. Elizabeth's on the other. These relationships are characterized by the highest degree of trust, confidence, good faith, honesty and candor, as well as a prohibition against self-dealing.

54. Similar or identical to the fiduciary relationships that characterize the lawyer-client, doctor-patient and clergyman-church member relationships, such special relationships also existed in this case between plaintiff and his parents (who were members of the Roman Catholic Church and religion and faithful adherents to its doctrines, rituals, hierarchical organization and

precepts) and DeLuca, Diocese, and St. Elizabeth's.

55. This special fiduciary relationship was formed due to defendants' positions of the highest trust and spiritual authority in the Roman Catholic religion to which plaintiff and his parents were adherents. It was formed when plaintiff and plaintiff's parents placed trust in the faithful integrity of defendants and their agents as religious authorities and leaders.

56. This special fiduciary relationship also was formed due to the actions of plaintiff's parents entrusting plaintiff to defendants' care in both church and school settings throughout the Diocese.

57. As a result of placing this trust, defendants gained influence, superiority and assumed religious control and responsibility over plaintiff and plaintiff's parents. Defendants assumed a duty to act for or give advice to these parents regarding matters falling within the scope of the relationship.

58. Such a special fiduciary relationship also was formed through the giving of regular sums of money by plaintiff's parents, through participation in religious rituals and celebrations and through organizational membership.

#### **F. Plaintiff's Background**

59. Robert Quill was born on March 22, 1955 in Wilmington, DE. He and his family, including six siblings, were devout Roman Catholics and members of St. Elizabeth's Parish.

60. Plaintiff was an Eagle Scout in the Boy Scouts of America. He was selected by his high school faculty to attend the American Legion Boys State, and from there, he was elected to represent the State of Delaware at Boys Nation in Washington, DC. In the summer following his

sophomore year of high school, he was selected as one of 20 students in Delaware to participate in a Title IX funded, marine biology, two-week, summer seminar held at the University of Delaware's Cape Henlopen facility. He was recognized by the National Elks for his achievements.

61. Plaintiff was a Dean's List student at St. Meinrad College (Indiana), where he graduated in 1978 with a B.S. in Biology, with minors in Chemistry, Philosophy, and Theology.

62. Plaintiff then joined the United States Navy in 1980, where he became a Commissioned Officer and attained the rank Lieutenant (O-3).

63. Following his Navy tour, plaintiff attended law school at Georgia State University and graduated in 1989.

64. Thereafter, he began working for the Atlanta Legal Aid Society.

65. In 1991, plaintiff was selected to be a Staff Attorney for the United States Court of Appeals for the Eleventh Circuit, in Atlanta, Georgia. His tenure at the Court lasted 13 years, nine of which were as a Supervisory Staff Attorney for the Court.

66. He was placed on "Full and Permanent Disability" status by his psychiatrist, Dr. Lathrop, on October 15, 2002 after a diagnosis of severe Post Traumatic Stress Disorder Syndrome (PTSDS). His PTSDS was a direct result of the many years of sexual abuse he had been subjected to as a child by DeLuca. His disability was approved without opposition by the federal Office of Personnel Management, as well as by the Social Security Administration. He was quickly retired by the Eleventh Circuit.

#### **G. DeLuca's Earlier Sexual Crimes**

67. DeLuca was ordained as a priest by the Diocese of Wilmington in 1958. He was

assigned to serve at St. John the Beloved parish, in Wilmington, in 1961.

68. Mike Schulte (“Schulte”) was first molested by DeLuca in the early 1960s during a trip to Philadelphia. The two shared a hotel room, which had two beds, and Schulte woke up face down on his bed, being sexually abused by DeLuca who was on top of him. Later, on a trip to Virginia with the priest, Schulte had a blackout. He believes the priest put a sedative in his drink so he would pass out.

69. About three years later, Schulte told his parents about the incident when he noticed DeLuca with another altar boy and feared that the same thing would happen to him.

70. When Schulte’s parents called church officials, his allegations were investigated by the Reverend Douglas Dempster (“Dempster”).

71. Dempster told Schulte and his family never to mention the incident to anyone and that the Diocese would handle the matter. The Schultes believed Diocese officials would handle DeLuca in a way that would prevent further sexual abuse of children by DeLuca.

72. But in keeping with the 60 year policy of secrecy surrounding child abuse and pedophilia in the Roman Catholic Church, the Diocese intentionally, willfully, and with a conscious disregard for the obvious risks to any child who came into contact with DeLuca, failed to warn or disclose DeLuca’s abuse to public authorities or to the community and failed to warn parents or children, including plaintiff, of DeLuca’s actions and nature.

73. Dempster has stated that he informed the Diocese and that was the extent of his duty as investigator.

74. On information and belief, recent allegations reveal that civil suits were filed against DeLuca in 1958 in Indiana and Eastern Maryland in 1960, each of which mysteriously

disappeared from the dockets.

75. The Diocese knew of these allegations.

76. Similar allegations from former altar boys at St. John the Beloved, dating back to the mid 1960's, have recently appeared, which detail official business trips to Wildwood, New Jersey with DeLuca where he would inappropriately touch and have sex with the boys.

77. On May 29, 2007, in sworn testimony before the State of Delaware House of Representatives, Diocese attorney Anthony Flynn publically admitted that the Diocese had information about DeLuca sexually abusing children dating back to 1962.

78. DeLuca was transferred by the Diocese to St. Elizabeth's Parish in 1966 where he exercised full powers as a priest and teacher, despite the many instances of child abuse of which the Diocese had actual knowledge.

#### **H. Further Reckless and Gross Breach of Duty**

79. The Diocese's and St. Elizabeth's retention of DeLuca, who they knew or should have known was a threat to children, constituted an intentional failure to perform a manifest duty in reckless disregard of the consequences to all foreseeable victims of DeLuca, including plaintiff.

80. The Diocese's and St. Elizabeth's retention of DeLuca, who they knew or should have known was a threat to children, evidenced a conscious disregard for the safety of those children, including plaintiff.

81. The Diocese's and St. Elizabeth's failure to warn their parishioners of the danger posed by DeLuca constituted an intentional failure to perform a manifest duty in reckless disregard of the consequences to all foreseeable victims of DeLuca, including plaintiff.

82. The Diocese's and St. Elizabeth's failure to warn their parishioners of the danger posed by DeLuca evidenced a conscious disregard for the safety of those children, including plaintiff.

83. The Diocese's and St. Elizabeth's failure to use reasonable care to protect and supervise the children under their care constituted an intentional failure to perform a manifest duty in reckless disregard of the consequences to all foreseeable victims of DeLuca, including plaintiff.

84. The Diocese's and St. Elizabeth's failure to use reasonable care to protect and supervise the children under their care evidenced a conscious disregard for the safety of those children, including plaintiff

85. The Diocese's and St. Elizabeth's failure to use reasonable care to properly supervise DeLuca constituted an intentional failure to perform a manifest duty in reckless disregard of the consequences to all foreseeable victims of DeLuca, including plaintiff.

86. The Diocese's and St. Elizabeth's failure to use reasonable care to properly supervise DeLuca evidenced a conscious disregard for the safety of children within their care, including plaintiff.

### **I. DeLuca's Sexual Crimes Against Plaintiff**

87. Plaintiff attended St. Elizabeth's elementary school. He graduated from St. Elizabeth's High School in 1973.

88. Plaintiff was raised in a devout Roman Catholic family. He regularly attended Mass and received the sacraments of that Church. He participated in many Church related activities.

89. After being recruited by DeLuca while attending St. Elizabeth's schools, he was an

altar boy from the sixth grade through high school. DeLuca was his supervisor as an altar boy. One of DeLuca's official job duties was to supervise plaintiff as an altar boy. Plaintiff was a direct participant in liturgical exercises with DeLuca at the Roman Catholic Mass.

90. As a priest, DeLuca was a person of great influence and persuasion. He was revered as an authority figure and purported holy man.

91. DeLuca frequented plaintiff's parents' home as part of his job duties where he deceitfully befriended plaintiff's parents and won their trust and confidence, becoming a personal spiritual advisor. He was often asked to stay overnight if he had too much to drink or if the weather was bad.

92. Every Christmas after he finished his Mass schedule he came to plaintiff's house as a spiritual advisor and would spend every Christmas and the following week with plaintiff's family.

93. DeLuca took plaintiff and his twin brother to the beach, to New York City, to Washington, DC, and for dinners at the Hotel DuPont.

94. Beginning in 1968, when plaintiff was thirteen years old, DeLuca began a course of unpermitted, harmful, and offensive sexual contact upon plaintiff.

95. The first incident of sexual abuse occurred during an official job related trip to Wildwood, New Jersey in the summer of 1968. On the first night of the trip, DeLuca sat on plaintiff's bed and began rubbing him and touching plaintiff's genitals. He then pulled plaintiff's underwear off, rolled him over onto his back, laid down on top of plaintiff naked, and ejaculated on him. DeLuca sexually molested plaintiff in the same way every night of that week long trip.

96. On numerous occasions between 1968 and 1975 DeLuca engaged in non-consensual

sexual conduct with the plaintiff, then a minor, at various locations, at least 300 times.

97. The sexual abuse of plaintiff occurred at the following places: on official altar boy trips to Wildwood, New Jersey and to New York City, in rectory workplaces, and on his senior high school class ski trip in Pennsylvania where DeLuca chaperoned. DeLuca also sexually attacked plaintiff in his parents' house in Wilmington. He even molested him on his older brother Joe's wedding day at his parents' house.

98. It was widely known by Diocese and St. Elizabeth's during this time that DeLuca had an affinity for young boys and that this was the reason he was transferred from St. Elizabeth's to Holy Spirit Church in 1969.

99. Even after he was transferred to Holy Spirit Church, and to St. Matthew's Church, DeLuca still stalked and sexually molested plaintiff. He persuaded plaintiff's mother to allow him to stay with DeLuca at the rectory workplace on occasion.

100. Finally, in 1993 Diocese quietly removed DeLuca after decades of knowledge of his abuse of children and allowed him to retire. He chose to move to his hometown, Syracuse, New York, where in October 2006 he was arrested for sexually molesting a boy for four to five years. On June 28, 2007, DeLuca plead guilty to numerous counts of sexually abusing this young boy.

101. Only after DeLuca's initial arrest, and the widespread publicity that the arrest received, did the Diocese, on November 16, 2006, release the secret names of other of its priests who had substantiated claims of child sexual abuse brought against them.

102. When plaintiff read the news article about DeLuca being arrested in New York which was posted on delawareonline.com on October 22, 2006, a flood of memories were unleashed.

103. Plaintiff used one or more of the following coping mechanisms over the years to protect his psyche from the trauma of what DeLuca did to him: memory repression, denial, and dissociation.

104. Memory repression or traumatic amnesia is the memory loss of the abuse as a result of the overwhelming emotional state during the abuse.

105. Denial is the minimization or complete lack of acknowledgment of the abuse.

106. Dissociation is the disconnecting or numbing of oneself with regard to the abuse.

107. These coping mechanisms operated to remove or guard plaintiff from the effects of his abuse. The survivor is not able to confront the abuse until much later.

#### **J. Causation**

108. The willful, wanton, and reckless actions of the defendants were the proximate cause of separate and distinct immediate and long term injuries and conditions which plaintiff suffered. The actions of each defendant played a determinative role in these injuries. The gross negligence of the Diocese and St. Elizabeth's was a substantial or motivating factor in causing plaintiff's injuries.

#### **K. Injuries**

109. Because of the childhood sexual abuse plaintiff suffered at the hands of DeLuca, plaintiff has had struggles in forming successful relationships with men, women, and even his own family.

110. Plaintiff became withdrawn, isolated, ashamed, detached, glum, somber, and humorless after the first time DeLuca sexually molested him and increasingly more so as time, and the abuse, went on.

111. Plaintiff is an insomniac and uses sleep aids. He also surrounds himself with dogs and guns to feel more protected as a result of what DeLuca did to him.

112. Plaintiff became depressed and suicidal, and to this day struggles with depression and suicidal ideation.

113. Plaintiff saw a psychiatrist, Dr. Lathrop, from 2001 until 2002, who observed that his psycho/sexual/emotional development ended abruptly at age 13, that he was still a 13 year old in all those ways, and was incapable of being "fixed," or of recovery. Plaintiff's injuries are permanent.

114. Plaintiff was placed on "Full and Permanent Disability" status by his psychiatrist on October 15, 2002 after a diagnosis of severe Post Traumatic Stress Disorder Syndrome (PTSDS). His PTSDS was a direct result of the many years of sexual abuse he had been subjected to as a child by DeLuca. His disability was approved without opposition by the federal Office of Personnel Management.

115. Plaintiff's loss of salary as a result of being forced to retire early is in the range of \$1.5 million. His pension loss exceeds \$1 million.

116. Plaintiff's separate and distinct immediate and long term injuries and conditions, which were the result of childhood sexual abuse, include, but are not limited to, the above mentioned injuries and also sexual dysfunction, lack of intimacy, guilt, emotional pain, fear, fright, shame, humiliation, anger, loss of enjoyment of life, embarrassment, and other temporary or permanent personal injury.

#### **COUNT I (Assault and Battery)**

117. Plaintiff repeats and realleges paragraphs 1-116 set forth above.

118. The acts of DeLuca toward plaintiff are crimes in Delaware under, *inter alia*, 11 Del. C. §§ 615, 769, and 778. They also constituted civil assault and battery. These intentional torts occurred during the normal course of his routine and regular employment duties. Under agency principles his employers, Diocese and St. Elizabeth's, are legally responsible for these torts.

119. The actions of DeLuca, Diocese, and St. Elizabeth's were willful, wanton or oppressive and merit an award of punitive damages.

120. Plaintiff's right be free of assault and battery has been denied under the common law of the State of Delaware and the Act.

### **COUNT II (Negligence)**

121. Plaintiff repeats and realleges paragraphs 1-120 set forth above.

122. Defendant DeLuca owed a duty of care to the plaintiff under the circumstances then existing.

123. Defendant breached his duty by sexually molesting plaintiff for eight years.

124. As a direct and proximate result of defendant's negligence, plaintiff has been injured.

125. The actions of DeLuca were willful, wanton or oppressive and merit an award of punitive damages.

126. Plaintiff's right be free of negligence has been denied under the common law of the State of Delaware and the Act.

### **COUNT III (Gross Negligence)**

127. Plaintiff repeats and realleges paragraphs 1-126 set forth above.

128. Defendants Diocese and St. Elizabeth's owed a duty of care to the plaintiff under the circumstances then existing.

129. Defendants Diocese and St. Elizabeth's intentionally, willfully, wantonly, recklessly, and with gross negligence breached their duty to the plaintiff by retaining and not supervising DeLuca, failing to warn plaintiff, and failing to protect the plaintiff from the foreseeable criminal acts of DeLuca when they knew or should have known that DeLuca posed a danger to plaintiff.

130. Diocese's and St. Elizabeth's breach of duty constituted an intentional failure to perform a manifest duty in reckless disregard of the consequences to all foreseeable victims of DeLuca, including Plaintiff.

131. Defendants Diocese and St. Elizabeth's evidenced a conscious disregard for the risk of harm to the foreseeable victims of DeLuca, all children in the Diocese, including plaintiff.

132. As a direct and proximate result of the Defendants' gross negligence and intentional, willful, wanton, and reckless acts, plaintiff has been injured.

133. The actions of the Diocese and St. Elizabeth's were willful, wanton or oppressive and merit an award of punitive damages.

134. Plaintiff's right be free of gross negligence by Diocese and St. Elizabeth's has been denied under the common law of the State of Delaware and the Act.

#### **COUNT IV (Breach of Fiduciary Duty)**

135. Plaintiff repeats and realleges paragraphs 1-134 set forth above.

136. Defendants Diocese, St. Elizabeth's and DeLuca owed various fiduciary duties to plaintiff.

137. Defendants Diocese, St. Elizabeth's and DeLuca grossly breached those fiduciary duties.

138. As a direct and proximate result of the Diocese's, St. Elizabeth's and DeLuca's breach of fiduciary duties, plaintiff has been injured.

139. The actions of the defendants Diocese, St. Elizabeth's and DeLuca were willful, wanton or oppressive and merit an award of punitive damages.

140. Plaintiff's rights have been denied under the common law of the State of Delaware and the Act.

#### **COUNT V (Fraud)**

141. Plaintiff repeats and realleges paragraphs 1-140 set forth above.

142. Diocese and St. Elizabeth's, by licensing and employing DeLuca, falsely represented to the plaintiff that DeLuca was a religious authority and leader of integrity and worthy of plaintiff's trust.

143. Diocese and St. Elizabeth's knew that representation was false, or it was made with reckless indifference to the truth.

144. The representation was made with an intent to induce the plaintiff to engage with and associate with DeLuca, such as by serving as an altar boy with him in Roman Catholic liturgy.

145. Plaintiff's engagement and association with DeLuca were done in justifiable reliance upon the representation.

146. As a direct and proximate result of defendant's false representations, plaintiff was injured.

147. The actions of Diocese and St. Elizabeth's were willful, wanton or oppressive and merit an award of punitive damages.

148. Plaintiff's rights have been denied under the common law of the State of Delaware and the Act.

#### **COUNT VI (Repressed Memory - Assault and Battery)**

149. Plaintiff repeats and realleges paragraphs 1-148 set forth above.

150. The acts of DeLuca toward plaintiff are crimes in Delaware under, *inter alia*, 11 Del. C. §§ 615, 769, and 778. They also constituted civil assault and battery. These intentional torts occurred during the normal course of his routine and regular employment duties. Under agency principles his employers, Diocese and St. Elizabeth's, are legally responsible for these torts.

151. The actions of DeLuca, Diocese, and St. Elizabeth's were willful, wanton or oppressive and merit an award of punitive damages.

152. It was not until October 2006 when plaintiff first understood or discovered that he had been the victim of years of sexual molestation by DeLuca between 1968-1975 because these traumatic events disrupted his memory function and cognition.

153. This was inherently unknowable until that date. Plaintiff was blamelessly ignorant of the assault and battery.

154. Plaintiff's right be free of assault and battery has been denied under the common law of the State of Delaware.

#### **COUNT VII (Repressed Memory - Negligence)**

155. Plaintiff repeats and realleges paragraphs 1-154 set forth above.

156. Defendants Diocese, St. Elizabeth's and DeLuca owed a duty of care to the plaintiff under the circumstances then existing.

157. Defendants Diocese, St. Elizabeth's and DeLuca intentionally, willfully, wantonly, recklessly, and negligently breached their duty to the plaintiff by retaining and not supervising DeLuca, failing to warn plaintiff, and failing to protect the plaintiff from the foreseeable criminal acts of DeLuca when they knew or should have known that DeLuca posed a danger to plaintiff.

158. In October 2006 plaintiff first understood that he had been the victim of defendants' negligence. This was inherently unknowable until October of 2006. Plaintiff was blamelessly ignorant of this negligence.

159. The actions of the Diocese, St. Elizabeth's and DeLuca were willful, wanton or oppressive and merit an award of punitive damages.

160. Plaintiff's right be free of negligence by Diocese and St. Elizabeth's has been denied under the common law of the State of Delaware.

**COUNT VIII (Breach of Contract / Breach of Implied Covenant of Good Faith and Fair Dealing)**

161. Plaintiff repeats and realleges paragraphs 1-160 set forth above.

162. Each school year, a contract was formed between plaintiff's parents and Diocese and St. Elizabeth's when plaintiff's parents agreed to send him to attend St. Elizabeth's elementary and high schools to receive his education. Plaintiff's parents agreed to pay Diocese and St. Elizabeth's tuition and in consideration, the Diocese and St. Elizabeth's agreed to educate plaintiff.

163. At the end of each school year, a new contract was formed for the next year.

164. One of the implied terms of these contracts was to keep plaintiff safe.

165. Another of the implied terms was that Diocese, St. Elizabeth's and their employees, priests, teachers, campus ministers and agents would not allow plaintiff to be sexually molested, abused and raped by teachers and priests at the school.

166. Another of the implied terms was that if teachers, priests or other employees of Diocese and St. Elizabeth's observed plaintiff being sexually abused by a priest, they would immediately step in and stop such blatantly inappropriate conduct.

167. Defendants and their priests, teachers, employees and agents breached these duties.

168. Plaintiff has endured a lifetime of injuries as a result of this breach.

169. Plaintiff was a third party beneficiary of this contract. Both plaintiff's parents and defendants intended this contract to be for plaintiff's benefit and intended to confer third party beneficiary status upon him. Both plaintiff's parents and defendants intended that plaintiff have enforceable rights under this contract.

170. Additional contracts were formed between plaintiff's parents and Diocese, St. Elizabeth's and DeLuca when plaintiff's parents agreed to allow him to serve as an altar boy and aid in religious ceremonies and celebrations in consideration for defendants' agreement to teach him these skills.

171. One of the implied terms of these contracts was to keep plaintiff safe.

172. Another of the implied terms was that defendants and their employees, priests, teachers, campus ministers and agents would not allow plaintiff to be sexually molested, abused and raped.

173. Another of the implied terms was that if priests or other employees of defendants observed plaintiff being sexually abused by a priest, they would immediately step in and stop such

blatantly inappropriate conduct.

174. Defendants breached these duties.

175. Plaintiff has endured a lifetime of injuries as a result of this breach.

176. Plaintiff was a third party beneficiary of this contract. Both plaintiff's parents and Diocese, St. Elizabeth's and DeLuca intended these contracts to be for plaintiff's benefit and intended to confer third party beneficiary status upon him. Both plaintiff's parents and defendants Diocese, St. Elizabeth's and DeLuca intended that plaintiff have enforceable rights under this contract.

177. Further contracts were formed between plaintiff's parents and Diocese, St. Elizabeth's and DeLuca when DeLuca traveled with plaintiff or gave him rides or traveled with him in and around Delaware as well as to New York, New Jersey, Pennsylvania, Washington, D.C. and other locations, for altar boy trips, school trips and other reasons. Plaintiff's parents agreed to allow DeLuca the pleasure of plaintiff's company in consideration for DeLuca's agreement to take care of plaintiff, keep him safe and take him on trips.

178. One of the express and implied terms of these contracts was to keep plaintiff safe.

179. Another of the implied terms was that defendants and their employees, priests, teachers, campus ministers and agents would not allow plaintiff to be sexually molested, abused and raped.

180. Defendants breached these duties.

181. Plaintiff has endured a lifetime of injuries as a result of this breach.

182. Plaintiff was a third party beneficiary of this contract. Both plaintiff's parents and defendants Diocese, St. Elizabeth's and DeLuca intended this contract to be for plaintiff's benefit

and intended to confer third party beneficiary status upon him. Both plaintiff's parents and defendants Diocese, St. Elizabeth's and DeLuca intended that plaintiff have enforceable rights under this contract.

183. Plaintiff's rights have been denied under the common law of the State of Delaware and the Act.

**Wherefore**, Plaintiff prays that the Court:

- (a) Enter judgment against the defendants, jointly and severally.
- (b) Enter a judgment against the defendants, jointly and severally, for compensatory and punitive damages.
- (c) Enter a judgment against defendants, jointly and severally, for costs and pre and post judgment interest.
- (d) Require such other and further relief as the Court deems just and proper under the circumstances.

**THE NEUBERGER FIRM, P.A.**

/s/ Thomas S. Neuberger  
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Dated: August 8, 2007

**CERTIFICATE OF SERVICE**

I, Stephen J. Neuberger, being a member of the bar of this Court do hereby certify that on August 8, 2007, I electronically filed this **Pleading** with the Clerk of the Court using CM/ECF which will send notification of such filing to the following:

Anthony G. Flynn, Esquire  
Young Conaway Stargatt & Taylor LLP  
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I also certify that I served this **Pleading** by U.S. Mail on the following individual:

Stephen P. Casarino, Esquire  
Casarino Christman & Shalk, P.A.  
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Wilmington, DE 19899  
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/s/ Stephen J. Neuberger  
**STEPHEN J. NEUBERGER, ESQ.**

/ Quill, Robert / Pleadings / First Amended Complaint.final

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

**ROBERT QUILL,**

**Plaintiff,**

**v.**

**CATHOLIC DIOCESE OF  
WILMINGTON, INC., a Delaware  
corporation; ST. ELIZABETH'S  
CATHOLIC CHURCH, a Delaware  
corporation; Rev. FRANCIS G.  
DELUCA, individually and in his  
official capacity; and Rev. MICHAEL  
A. SALTARELLI, in his official  
capacity,**

C.A. No. 07-435-SLR

Jury Trial Demanded

**Defendants**

**ANSWER OF DEFENDANTS  
CATHOLIC DIOCESE OF WILMINGTON, INC.  
AND BISHOP MICHAEL A. SALTARELLI**

1. This paragraph of the First Amended Complaint includes plaintiff's description of the nature of his legal claims, which requires no response from Defendants Catholic Diocese of Wilmington, Inc. (the "Diocese") and Rev. Michael A. Saltarelli ("Bishop Saltarelli") (collectively, "Answering Defendants"). Regarding the factual averments in this paragraph, Answering Defendants admit that Rev. Francis G. DeLuca ("Fr. DeLuca"), was a priest of the Diocese from 1958 until 1993. On information and belief, Answering Defendants also admit that Fr. DeLuca was convicted in 2007 of sexual abuse and endangering the welfare of a child, crimes which he committed during and after 2002. To the extent that the averments in the last sentence of this paragraph are directed to Answering Defendants, they are denied. Answering Defendants are without

knowledge or information sufficient to form a belief as to the balance of the averments of this paragraph, and to avoid implied admission they are denied.

## **I. JURISDICTION**

2. Answering Defendants admit that plaintiff purports to invoke diversity jurisdiction pursuant to 28 U.S.C. §§ 1332, 2201 and 2202. Answering Defendants are without knowledge or information sufficient to form a belief as to the balance of the averments of this paragraph, and to avoid implied admission they are denied.

3. Answering Defendants admit that plaintiff contends that venue is appropriate in this judicial district. Answering Defendants are without knowledge or information sufficient to form a belief as to the balance of the averments of this paragraph, and to avoid implied admission they are denied.

## **II. THE PARTIES**

4. Answering Defendants lack knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph, and to avoid implied admission the same are denied.

5. Denied that the registered corporate address for Defendant Diocese is 1626 N. Union St., but admitted that its corporate address is 1925 Delaware Avenue, Wilmington, Delaware 19806. Otherwise, the averments of this paragraph 6 are admitted.

6. Admitted that St. Elizabeth's Roman Catholic Church ("St. Elizabeth's) is

a religious corporation organized and existing under Title 27 of the Delaware Code, and that it is located in Wilmington, Delaware, that it was founded by the Bishop of Wilmington, and that it operates as a parish within the Diocese in accordance with the norms of the Roman Catholic Church. Admitted further that St. Elizabeth's is authorized to do business and is doing business in the State of Delaware as a private religious institution, operating both a church and an elementary and high school. Answering Defendants are without knowledge or information sufficient to form a belief as to the balance of the averments of this paragraph, and to avoid implied admission they are denied.

7. Admitted that Fr. DeLuca is a Roman Catholic Priest who was a parish priest in the Diocese from 1958 until 1993. On information and belief it is further admitted that Fr. DeLuca is 78 years old and formerly resided at 100 Pastime Drive, Syracuse, New York. On information and belief, it is further admitted that in 2007 Fr. DeLuca was convicted of sexual abuse and endangering the welfare of a child, crimes which he committed during and after 2004. Answering Defendants are without knowledge or information sufficient to form a belief as to the balance of the averments of this paragraph, and to avoid implied admission they are denied.

8. Admitted that Fr. DeLuca was an assistant pastor of St. Elizabeth's from 1966 until 1969. Answering Defendants are without knowledge or information sufficient to form a belief as to the balance of the averments of this paragraph, and to avoid implied admission they are denied.

9. Admitted that Defendant Rev. Michael A. Saltarelli is the current Bishop

of the Diocese of Wilmington, and that he is a citizen of Delaware. The remaining allegations of paragraph 9 are legal conclusions to which no response is required.

10. Admitted that the Diocese granted faculties to Fr. DeLuca to publicly perform priestly office in the Diocese of Wilmington. Admitted further that Fr. DeLuca could not publicly perform priestly office within the Diocese of Wilmington without the permission of the Diocese, and, of course, without having been ordained a Roman Catholic Priest. Otherwise, the averments of paragraph 10 are denied.

11. Admitted that the Diocese was and is responsible for overseeing its parishes, including St. John the Beloved, St. Elizabeth's, Holy Spirit and St. Matthew's, in accordance with the norms of the Roman Catholic Church, including the assignment of priests to those parishes. Otherwise, the averments of paragraph 11 are denied.

12. On information and belief, admitted that the Diocese was notified by the family of Michael Schulte that he had been abused by Fr. DeLuca while assigned to St. John the Beloved Parish, before he was assigned to St. Elizabeth's. Otherwise, Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of the balance of the averments of this paragraph, and, to avoid implied admission, the same are denied.

13. Denied as to Answering Defendants. Answering Defendants are without knowledge or information sufficient to form a belief as to the balance of the averments of this paragraph, and to avoid implied admission they are denied.

14. Denied as to Answering Defendants. Answering Defendants are without knowledge or information sufficient to form a belief as to the balance of the averments of this paragraph, and to avoid implied admission they are denied.

### **III. FACTS GIVING RISE TO THE ACTION**

#### **A. Institutional Knowledge of Clergy Sexual Abuse Leading to The Underlying Gross Negligence**

15. Admitted that Monsignor J. Thomas Cini is Vicar General for Administration of the Diocese, and that he testified under oath in July, 2007, that rules and regulations of the Roman Catholic Church in the 1800s contained a provision designed to prevent child sexual abuse from happening. Answering Defendants are without knowledge or information sufficient to form a belief as to the balance of the averments of this paragraph, and to avoid implied admission they are denied.

16. Admitted.

17. Admitted that Canon 1395 was enacted with the recodification of the Code of Canon Law in 1983. The text of Canon 1395 speaks for itself.

18. Denied as stated as to Answering Defendants. Otherwise, Answering Defendants are without knowledge or information sufficient to form a belief as to the averments of this paragraph, and to avoid implied admission the same are denied.

19. Answering Defendants are without knowledge or information sufficient to form a belief as to averments of this paragraph.

20. Answering Defendants are without knowledge or information sufficient to form a belief as to the averments in this paragraph, and to avoid implied admission the same are denied.

21. Answering Defendants are without knowledge or information sufficient to form a belief as to the averments in this paragraph, and to avoid implied admission the same are denied.

22. Answering Defendants are without knowledge or information sufficient to form a belief as to the averments in this paragraph, and to avoid implied admission the same are denied.

23. Answering Defendants are without knowledge or information sufficient to form a belief as to the averments in this paragraph, and to avoid implied admission the same are denied.

24. Admitted that the Roman Catholic Church has made attempts to curb sexual abuse of children, including by promulgating canonical norms and other policies, including those adopted by the National Conference of Catholic Bishops, later the United States Conference of Catholic Bishops. Otherwise, Answering Defendants are without knowledge or information sufficient to form a belief as to the averments of this paragraph.

25. Answering Defendants are without knowledge or information sufficient to form a belief as to the averments in this paragraph.

**B. Institutional Secrecy Regarding Clergy Sexual Abuse Leading to the Underlying Gross Negligence**

26. Denied as to Answering Defendants. Answering Defendants are without knowledge or information sufficient to form a belief as to the balance of the averments of this paragraph, and to avoid implied admission they are denied.

27. Denied as to Answering Defendants. Answering Defendants are without knowledge or information sufficient to form a belief as to the balance of the averments of this paragraph, and to avoid implied admission they are denied.

28. Denied as to Answering Defendants. Answering Defendants are without knowledge or information sufficient to form a belief as to the balance of the averments of this paragraph, and to avoid implied admission they are denied.

29. Answering Defendants lack knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph, and to avoid implied admission the same are denied.

30. Answering Defendants are without knowledge or information sufficient to form a belief as to the averments of this paragraph, and, to avoid implied admission, they are denied.

31. Admitted that an Instruction on the Manner of Proceeding in Cases of Solicitation, issued by the Supreme and Holy Congregation of the Holy Office, was published by The Vatican Press in 1962. The Instruction speaks for itself. Otherwise Answering Defendants are without knowledge or information sufficient to form a belief

as to the averments in this paragraph.

32. Admitted that the Diocese maintains in a confidential manner certain documents regarding clergy sexual abuse of minors. Otherwise Answering Defendants are without knowledge or information sufficient to form a belief as to the averments in this paragraph.

33. Admitted that Canons 486-488 provide for the maintenance of general archives, including provisions regarding security and access thereto, and removal of documents. These Canons speak for themselves.

34. As to Answering Defendants, admitted that a secret archive is maintained in accordance with Canon 489, and that certain records regarding Fr. DeLuca are housed in this archive. Otherwise, the averments of this paragraph are denied.

35. Denied as to Answering Defendants. Answering Defendants are without knowledge or information sufficient to form a belief as to the balance of the averments of this paragraph, and to avoid implied admission they are denied.

**C. DeLuca's History of Pedophilic Sexual Molestation and the Underlying Intentional and Negligent Tort Claims**

36. Denied as stated as to Answering Defendants. Otherwise Answering Defendants are without knowledge or information sufficient to form a belief as to the averments in this paragraph.

37. Denied as stated.

38. On information and belief, admitted that in 1966 the parents of a victim reported that their son had been sexually abused by Fr. DeLuca. Otherwise the averments of this paragraph are denied as they relate to Answering Defendants. As they relate to other defendants, Answering Defendants are without knowledge or information sufficient to form a belief regarding the averments of this paragraph

39. This paragraph contains legal contentions of plaintiff that require no response from Answering Defendants at this time. Admitted that the Diocese had a duty to protect children from clerical sexual abuse. To the extent this paragraph contains a factual averment, Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of the averment, and to avoid implied admission the same are denied.

40. This paragraph contains legal contentions of plaintiff that require no response from Answering Defendants at this time. Admitted that the Diocese had a duty to protect children from clerical sexual abuse. To the extent this paragraph contains a factual averment, Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of the averment, and to avoid implied admission the same are denied.

41. This paragraph contains legal contentions of plaintiff that require no response from Answering Defendants at this time. Admitted that the Diocese had a duty to protect children from clerical sexual abuse. To the extent this paragraph contains a factual averment, Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of the averment, and to avoid implied admission the same

are denied.

42. Admitted that the identity of at least one victim of Fr. DeLuca has been publicized. Denied that Fr. DeLuca was an agent of the Diocese. Denied that the Diocese breached any duty. Answering Defendants are without knowledge or information sufficient to form a belief as to the balance of the averments of this paragraph, and to avoid implied admission they are denied.

43. Admitted that the Diocese has publicly admitted that it has received admitted, corroborated or otherwise substantiated allegations of sexual abuse of minors by Fr. DeLuca. The balance of the averment of this paragraph is denied.

44. Answering Defendants lack knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph, and to avoid implied admission the same are denied.

45. Answering Defendants lack knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph, and to avoid implied admission the same are denied.

#### **D. Agency**

46. Admitted that the Diocese granted faculties to Fr. DeLuca to publicly perform priestly office in the Catholic Diocese of Wilmington. Admitted further that Fr. DeLuca could not publicly perform priestly office within the Diocese of Wilmington without the permission of the Diocese, and, of course, without having been ordained as a

Roman Catholic priest. Otherwise the averments of this paragraph are denied.

47. This paragraph contains legal contentions of plaintiff which require no response at this time. Admitted that the Diocese granted faculties to Fr. DeLuca to publicly perform priestly office within the Diocese. Further admitted that the Diocese assigned Fr. DeLuca to the parishes where he worked throughout his tenure as a priest of the Diocese in public ministry.

48. Denied as to Answering Defendants. Answering Defendants are without knowledge or information sufficient to form a belief as to the balance of the averments of this paragraph, and to avoid implied admission they are denied.

49. Denied as to Answering Defendants. Answering Defendants are without knowledge or information sufficient to form a belief as to the balance of the averments of this paragraph, and to avoid implied admission they are denied.

50. Denied as to Answering Defendants. Answering Defendants are without knowledge or information sufficient to form a belief as to the balance of the averments of this paragraph, and to avoid implied admission they are denied.

51. Denied as to Answering Defendants. Answering Defendants are without knowledge or information sufficient to form a belief as to the balance of the averments of this paragraph, and to avoid implied admission they are denied.

52. Admitted that the Diocese granted faculties to Fr. DeLuca to publicly perform priestly office in the Catholic Diocese of Wilmington, and that the Diocese

assigned Fr. DeLuca to the various parishes where he worked during his tenure as a priest of the Diocese in public ministry. Further admitted that Fr. DeLuca retired, and receives benefits pursuant to the pension plan of the Diocese. Otherwise, the balance of the averments in this paragraph are denied.

#### **E. Fiduciary Relationships**

53. This paragraph contains legal contentions of plaintiff that require no response from Answering Defendants at this time. Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of the factual averments of this paragraph, and to avoid implied admission the same are denied.

54. This paragraph contains legal contentions of plaintiff that require no response from Answering Defendants at this time. Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of the factual averments of this paragraph, and to avoid implied admission the same are denied.

55. This paragraph contains legal contentions of plaintiff that require no response from Answering Defendants at this time. Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of the factual averments of this paragraph, and to avoid implied admission the same are denied.

56. This paragraph contains legal contentions of plaintiff that require no response from Answering Defendants at this time. Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of the factual

averments of this paragraph, and to avoid implied admission the same are denied.

57. This paragraph contains legal contentions of plaintiff that require no response from Answering Defendants at this time. Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of the factual averments of this paragraph, and to avoid implied admission the same are denied.

58. This paragraph contains legal contentions of plaintiff that require no response from Answering Defendants at this time. Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of the factual averments of this paragraph, and to avoid implied admission the same are denied.

#### **F. Plaintiff's Background**

59. Answering Defendants lack knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph, and to avoid implied admission the same are denied.

60. Answering Defendants lack knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph, and to avoid implied admission the same are denied.

61. Answering Defendants lack knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph, and to avoid implied admission the same are denied.

62. Answering Defendants lack knowledge or information sufficient to form a

belief as to the truth of the averments in this paragraph, and to avoid implied admission the same are denied.

63. Answering Defendants lack knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph, and to avoid implied admission the same are denied.

64. Answering Defendants lack knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph, and to avoid implied admission the same are denied.

65. Answering Defendants lack knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph, and to avoid implied admission the same are denied.

66. This paragraph contains legal contentions of plaintiff that require no response from Answering Defendants at this time. Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of the factual averments of this paragraph, and to avoid implied admission the same are denied.

#### **G. DeLuca's Earlier Sexual Crimes**

67. On information and belief, admitted that Fr. DeLuca was ordained a priest for the Diocese on February 3, 1958. Admitted further that Fr. DeLuca was assigned to serve at St. John the Beloved Parish, in Wilmington, in 1961. The balance of the averment of this paragraph is denied.

68. Admitted that Michael Schulte reported that he was sexually abused by Fr. DeLuca sometime during the early 1960's. Answering Defendants are without knowledge or information sufficient to form a belief as to the balance of the averments in this paragraph.

69. Admitted that Michael Schulte informed his parents of that he had been sexually abused by Fr. DeLuca sometime after it occurred. Answering Defendants are without knowledge or information sufficient to form a belief as to the balance of the averments in this paragraph.

70. Admitted on information and belief.

71. Answering Defendants are without knowledge or information sufficient to form a belief as to the averments in this paragraph.

72. Admitted that, until 2002, the Diocese did not disclose to law enforcement authorities the report of abuse by Michael Schulte and his parents, and did not otherwise disclose to the public information regarding his abuse by Fr. DeLuca until 2006. Otherwise, Answering Defendants deny the averments of this paragraph.

73. Answering Defendants are without knowledge or information sufficient to form a belief as to the averments in this paragraph.

74. Answering Defendants are without knowledge or information sufficient to form a belief as to the averments in this paragraph.

75. Denied.

76. Answering Defendants are without knowledge or information sufficient to form a belief as to the averments in this paragraph.

77. Admitted that, on May 29, 2007, the Diocesan Attorney testified at a public hearing in the House of Representatives that the Diocese had information concerning a report in 1966 of sexual abuse of a minor by Fr. DeLuca. Otherwise, the averments of this paragraph are denied.

78. Admitted that Fr. DeLuca was transferred to St. Elizabeth's Parish in 1966 where he served as assistant pastor. Denied that the Diocese had knowledge of more than one report of child abuse by Fr. DeLuca at the time of his transfer. Otherwise Answering Defendants are without knowledge or information sufficient to form a belief as to the averments in this paragraph.

#### **H. Further Reckless and Gross Breach of Duty**

79. Denied as to Answering Defendants. Answering Defendants are without knowledge or information sufficient to form a belief as to the balance of the averments of this paragraph, and to avoid implied admission they are denied.

80. Denied as to Answering Defendants. Answering Defendants are without knowledge or information sufficient to form a belief as to the balance of the averments of this paragraph, and to avoid implied admission they are denied.

81. Denied as to Answering Defendants. Answering Defendants are without

knowledge or information sufficient to form a belief as to the balance of the averments of this paragraph, and to avoid implied admission they are denied.

82. Denied as to Answering Defendants. Answering Defendants are without knowledge or information sufficient to form a belief as to the balance of the averments of this paragraph, and to avoid implied admission they are denied.

83. Denied as to Answering Defendants. Answering Defendants are without knowledge or information sufficient to form a belief as to the balance of the averments of this paragraph, and to avoid implied admission they are denied.

84. Denied as to Answering Defendants. Answering Defendants are without knowledge or information sufficient to form a belief as to the balance of the averments of this paragraph, and to avoid implied admission they are denied.

85. Denied as to Answering Defendants. Answering Defendants are without knowledge or information sufficient to form a belief as to the balance of the averments of this paragraph, and to avoid implied admission they are denied.

86. Denied as to Answering Defendants. Answering Defendants are without knowledge or information sufficient to form a belief as to the balance of the averments of this paragraph, and to avoid implied admission they are denied.

### **I. DeLuca's Sexual Crimes Against Plaintiff**

87. Answering Defendants lack knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph, and to avoid implied admission

the same are denied.

88. Answering Defendants lack knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph, and to avoid implied admission the same are denied.

89. Answering Defendants lack knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph, and to avoid implied admission the same are denied.

90. Answering Defendants lack knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph, and to avoid implied admission the same are denied.

91. Answering Defendants lack knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph, and to avoid implied admission the same are denied.

92. Answering Defendants lack knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph, and to avoid implied admission the same are denied.

93. Answering Defendants lack knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph, and to avoid implied admission the same are denied.

94. Answering Defendants lack knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph, and to avoid implied admission the same are denied.

95. Answering Defendants lack knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph, and to avoid implied admission the same are denied.

96. Answering Defendants lack knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph, and to avoid implied admission the same are denied.

97. Answering Defendants lack knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph, and to avoid implied admission the same are denied.

98. Denied as to Answering Defendants. Answering Defendants are without knowledge or information sufficient to form a belief as to the balance of the averments of this paragraph, and to avoid implied admission they are denied.

99. Answering Defendants lack knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph, and to avoid implied admission the same are denied.

100. Admitted that Fr. DeLuca was removed from ministry by the Diocese in 1993, and retired to Syracuse, New York. On information and belief, admitted further

that in October, 2006, Fr. DeLuca was arrested in Syracuse on charges relating to sexual abuse of a minor over a period of years. On information and belief, admitted further that, in June, 2007, Fr. DeLuca pleaded guilty to two charges of sexual abuse and one charge of endangering the welfare of a child. Otherwise, the balance of the averments in this paragraph are denied.

101. Admitted that in November, 2006, the Diocese publicized the names of priests of the Diocese as to whom the Diocese had received admitted, corroborated or otherwise substantiated allegations of sexual abuse of a minor. Otherwise, the balance of the averments in this paragraph are denied.

102. Answering Defendants lack knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph, and to avoid implied admission the same are denied.

103. Answering Defendants lack knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph, and to avoid implied admission the same are denied.

104. Answering Defendants lack knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph, and to avoid implied admission the same are denied.

105. Answering Defendants lack knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph, and to avoid implied admission

the same are denied.

106. Answering Defendants lack knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph, and to avoid implied admission the same are denied.

107. Answering Defendants lack knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph, and to avoid implied admission the same are denied.

#### **J. Causation**

108. Denied as to Answering Defendants.

#### **K. Injuries**

109. Denied as to Answering Defendants. Answering Defendants are without knowledge or information sufficient to form a belief as to the balance of the averments of this paragraph, and to avoid implied admission they are denied.

110. Answering Defendants lack knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph, and to avoid implied admission the same are denied.

111. Answering Defendants lack knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph, and to avoid implied admission the same are denied.

112. Answering Defendants lack knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph, and to avoid implied admission the same are denied.

113. Answering Defendants lack knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph, and to avoid implied admission the same are denied.

114. Answering Defendants lack knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph, and to avoid implied admission the same are denied.

115. Answering Defendants lack knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph, and to avoid implied admission the same are denied.

116. Answering Defendants lack knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph, and to avoid implied admission the same are denied.

#### **COUNT I (Assault and Battery)**

117. Paragraph 117 repeats and re-alleges paragraphs 1 through 116 of the First Amended Complaint. Answering Defendants adopt and incorporate by references herein their answers to paragraphs 1 through 116 of the First Amended Complaint as if each such answer was separately set forth here at length.

118. Denied that the Diocese is legally responsible for any tortious misconduct of Fr. DeLuca. Answering Defendants are without knowledge or information sufficient to form a belief as to the balance of the averments of this paragraph, and to avoid implied admission they are denied.

119. Denied as to the Diocese. Answering Defendants are without knowledge or information sufficient to form a belief as to the balance of the averments of this paragraph, and to avoid implied admission they are denied.

120. Denied that Answering Defendants have denied any right of plaintiff. Answering Defendants are without knowledge or information sufficient to form a belief as to the balance of the averments of this paragraph, and to avoid implied admission they are denied.

#### **COUNT II (Negligence)**

121. Paragraph 121 repeats and re-alleges paragraphs 1 through 120 of the First Amended Complaint. Answering Defendants adopt and incorporate by reference herein their answers to paragraphs 1 through 120 of the First Amended Complaint as if each such answer was separately set forth here at length.

122. This paragraph contains legal contentions of plaintiff that require no response from Answering Defendants at this time. To the extent that this paragraph contains a factual averment, Answering Defendants lack knowledge or information sufficient to form a belief as to its truth, and to avoid implied admission the same are denied.

123. Answering Defendants lack knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph, and to avoid implied admission the same are denied.

124. Answering Defendants lack knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph, and to avoid implied admission the same are denied.

125. Answering Defendants lack knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph, and to avoid implied admission the same are denied.

126. To the extent the averments of this paragraph relate to Answering Defendants, denied that they denied any right of plaintiff. Answering Defendants lack knowledge or information sufficient to form a belief as to the truth of the balance averments in this paragraph, and to avoid implied admission the same are denied.

### **COUNT III (Gross Negligence)**

127. Paragraph 127 repeats and re-alleges paragraphs 1 through 126 of the First Amended Complaint. Answering Defendants adopt and incorporate by reference herein their answers to paragraphs 1 through 126 of the First Amended Complaint as if each such answer was separately set forth here at length.

128. Admitted that the Diocese had a duty to protect minors, including plaintiff, from sexual abuse. Otherwise denied as to Answering Defendants. As they relate to other defendants, Answering Defendants are without knowledge or information sufficient

to form a belief as to the balance of the averments of this paragraph, and to avoid implied admission they are denied.

129. Denied as to Answering Defendants. Answering Defendants are without knowledge or information sufficient to form a belief as to the balance of the averments of this paragraph, and to avoid implied admission they are denied.

130. Denied as to Answering Defendants. Answering Defendants are without knowledge or information sufficient to form a belief as to the balance of the averments of this paragraph, and to avoid implied admission they are denied.

131. Denied as to Answering Defendants. Answering Defendants are without knowledge or information sufficient to form a belief as to the balance of the averments of this paragraph, and to avoid implied admission they are denied.

132. Denied as to Answering Defendants. Answering Defendants are without knowledge or information sufficient to form a belief as to the balance of the averments of this paragraph, and to avoid implied admission they are denied.

133. Denied as to Answering Defendants. Answering Defendants are without knowledge or information sufficient to form a belief as to the balance of the averments of this paragraph, and to avoid implied admission they are denied.

134. Denied as to Answering Defendants. Answering Defendants are without knowledge or information sufficient to form a belief as to the balance of the averments of this paragraph, and to avoid implied admission they are denied.

**COUNT IV (Breach of Fiduciary Duty)**

135. Paragraph 135 repeats and re-alleges paragraphs 1 through 134 of the First Amended Complaint. Answering Defendants adopt and incorporate by reference herein their answers to paragraphs 1 through 134 of the First Amended Complaint as if each such answer was separately set forth here at length.

136. This paragraph contains a vague legal contention by plaintiff, to which no response is required at this time. To the extent this paragraph is deemed to contain a factual averment, it is denied as to the Diocese. Answering Defendants are without knowledge or information sufficient to form a belief as to the balance of the averments of this paragraph, and to avoid implied admission they are denied.

137. Denied as to Answering Defendants. Answering Defendants are without knowledge or information sufficient to form a belief as to the balance of the averments of this paragraph, and to avoid implied admission they are denied.

138. Denied as to Answering Defendants. Answering Defendants are without knowledge or information sufficient to form a belief as to the balance of the averments of this paragraph, and to avoid implied admission they are denied.

139. Denied as to Answering Defendants. Answering Defendants are without knowledge or information sufficient to form a belief as to the balance of the averments of this paragraph, and to avoid implied admission they are denied.

140. Denied as to Answering Defendants. Answering Defendants are without

knowledge or information sufficient to form a belief as to the balance of the averments of this paragraph, and to avoid implied admission they are denied.

**COUNT V (Fraud)**

141. Paragraph 141 repeats and re-alleges paragraphs 1 through 140 of the First Amended Complaint. Answering Defendants adopt and incorporate by reference herein their answers to paragraphs 1 through 140 of the First Amended Complaint as if each such answer was separately set forth here at length.

142. Denied as to Answering Defendants. Answering Defendants are without knowledge or information sufficient to form a belief as to the balance of the averments of this paragraph, and to avoid implied admission they are denied.

143. Denied as to Answering Defendants. Answering Defendants are without knowledge or information sufficient to form a belief as to the balance of the averments of this paragraph, and to avoid implied admission they are denied.

144. Denied as to Answering Defendants. Answering Defendants are without knowledge or information sufficient to form a belief as to the balance of the averments of this paragraph, and to avoid implied admission they are denied.

145. Denied as to Answering Defendants. Answering Defendants are without knowledge or information sufficient to form a belief as to the balance of the averments of this paragraph, and to avoid implied admission they are denied.

146. Denied as to Answering Defendants. Answering Defendants are without

knowledge or information sufficient to form a belief as to the balance of the averments of this paragraph, and to avoid implied admission they are denied.

147. Denied as to Answering Defendants. Answering Defendants are without knowledge or information sufficient to form a belief as to the balance of the averments of this paragraph, and to avoid implied admission they are denied.

148. Denied as to Answering Defendants. Answering Defendants are without knowledge or information sufficient to form a belief as to the balance of the averments of this paragraph, and to avoid implied admission they are denied.

**COUNT VI (Repressed Memory – Assault and Battery)**

149. Paragraph 149 repeats and re-alleges paragraphs 1 through 148 of the First Amended Complaint. Answering Defendants adopt and incorporate by reference herein their answers to paragraphs 1 through 148 of the First Amended Complaint as if each such answer was separately set forth here at length.

150. Denied that the Diocese is legally responsible for the torts of Fr. DeLuca. This paragraph also contains legal contentions of plaintiff that require no response from Answering Defendants at this time. To the extent this paragraph contains factual averments, Answering Defendants are without knowledge or information sufficient to form a belief as to them, and to avoid implied admission they are denied.

151. Denied as to Answering Defendants. Answering Defendants are without knowledge or information sufficient to form a belief as to the balance of the averments of this paragraph, and to avoid implied admission they are denied.

152. Answering Defendants are without knowledge or information sufficient to form a belief as to the balance of the averments of this paragraph, and to avoid implied admission they are denied.

153. Denied as to Answering Defendants. Answering Defendants are without knowledge or information sufficient to form a belief as to the balance of the averments of this paragraph, and to avoid implied admission they are denied.

154. Denied that the Diocese denied any right of plaintiff. Otherwise Answering Defendants are without knowledge or information sufficient to form a belief as to the balance of the averments of this paragraph, and to avoid implied admission they are denied.

#### **COUNT VII (Repressed Memory – Negligence)**

155. Paragraph 155 repeats and re-alleges paragraphs 1 through 154 of the First Amended Complaint. Answering Defendants adopt and incorporate by reference herein their answers to paragraphs 1 through 154 of the First Amended Complaint as if each such answer was separately set forth here at length.

156. Admitted that the Diocese had a duty to protect minors, including plaintiff, from sexual abuse. Otherwise denied as to Answering Defendants. Answering Defendants are without knowledge or information sufficient to form a belief as to the balance of the averments of this paragraph, and to avoid implied admission they are denied.

157. Denied as to Answering Defendants. Answering Defendants are without

knowledge or information sufficient to form a belief as to the balance of the averments of this paragraph, and to avoid implied admission they are denied.

158. Denied as to Answering Defendants. Answering Defendants are without knowledge or information sufficient to form a belief as to the balance of the averments of this paragraph, and to avoid implied admission they are denied.

159. Denied as to Answering Defendants. Answering Defendants are without knowledge or information sufficient to form a belief as to the balance of the averments of this paragraph, and to avoid implied admission they are denied.

160. Denied as to the Diocese. Answering Defendants are without knowledge or information sufficient to form a belief as to the balance of the averments of this paragraph, and to avoid implied admission they are denied.

**COUNT VIII (Breach of Contract/Breach of Implied Covenant of Good Faith and Fair Dealing)**

161. Paragraph 161 repeats and re-alleges paragraphs 1 through 160 of the First Amended Complaint. Answering Defendants adopt and incorporate by reference herein their answers to paragraphs 1 through 160 of the First Amended Complaint as if each such answer was separately set forth here at length.

162. Denied as to the Diocese. Otherwise Answering Defendants are without knowledge or information sufficient to form a belief as to the averments in this paragraph.

163. Denied as to the Diocese. Otherwise Answering Defendants are without knowledge or information sufficient to form a belief as to the averments in this paragraph.

164. Denied there was any contract with the Diocese. Otherwise Answering Defendants are without knowledge or information sufficient to form a belief as to the averments in this paragraph.

165. Denied there was any contract with the Diocese. Otherwise Answering Defendants are without knowledge or information sufficient to form a belief as to the averments in this paragraph.

166. Denied there was any contract with the Diocese. Otherwise Answering Defendants are without knowledge or information sufficient to form a belief as to the averments in this paragraph.

167. Denied as to Answering Defendants. Answering Defendants are without knowledge or information sufficient to form a belief as to the balance of the averments of this paragraph, and to avoid implied admission they are denied.

168. Denied there was any such breach by Answering Defendants. Otherwise Answering Defendants are without knowledge or information sufficient to form a belief as to the balance of the averments of this paragraph, and to avoid implied admission they are denied.

169. Denied there was any such contract with the Diocese. Otherwise

Answering Defendants are without knowledge or information sufficient to form a belief as to the averments in this paragraph.

170. Denied as to Answering Defendants.

171. Denied there were any such contracts with the Diocese. Otherwise Answering Defendants are without knowledge or information sufficient to form a belief as to the averments in this paragraph.

172. Denied there were any such contracts with the Diocese. Otherwise Answering Defendants are without knowledge or information sufficient to form a belief as to the averments in this paragraph.

173. Denied there were any such contracts with the Diocese. Otherwise Answering Defendants are without knowledge or information sufficient to form a belief as to the averments in this paragraph.

174. Denied as to Answering Defendants. Answering Defendants are without knowledge or information sufficient to form a belief as to the balance of the averments of this paragraph, and to avoid implied admission they are denied.

175. Denied there was any such breach by Answering Defendants. Otherwise Answering Defendants are without knowledge or information sufficient to form a belief as to the balance of the averments of this paragraph, and to avoid implied admission they are denied.

176. Denied there was any such contract with the Diocese. Otherwise Answering Defendants are without knowledge or information sufficient to form a belief as to the averments in this paragraph.

177. Denied there were any such further contracts with the Diocese. Otherwise Answering Defendants are without knowledge or information sufficient to form a belief as to the averments in this paragraph.

178. Denied there were any such further contracts with the Diocese. Otherwise Answering Defendants are without knowledge or information sufficient to form a belief as to the averments in this paragraph.

179. Denied there were any such further contracts with the Diocese. Otherwise Answering Defendants are without knowledge or information sufficient to form a belief as to the averments in this paragraph.

180. Denied as to Answering Defendants. Answering Defendants are without knowledge or information sufficient to form a belief as to the balance of the averments of this paragraph, and to avoid implied admission they are denied.

181. Denied there was any contract between plaintiff's parents and the Diocese, and that there was any breach by Answering Defendants. Otherwise Answering Defendants are without knowledge or information sufficient to form a belief as to the balance of the averments of this paragraph, and to avoid implied admission they are denied.

182. Denied there was any contract between plaintiff's parents and the Diocese, and that there was any breach by Answering Defendants. Otherwise Answering Defendants are without knowledge or information sufficient to form a belief as to the averments in this paragraph.

183. Denied that Answering Defendants have denied any rights of plaintiff. Otherwise Answering Defendants are without knowledge or information sufficient to form a belief as to the balance of the averments of this paragraph, and to avoid implied admission they are denied.

### **DEFENSES**

#### **First Defense**

184. Plaintiff's claims fail to state a claim upon which relief may be granted.

#### **Second Defense**

185. This Court may lack jurisdiction over the subject matter of this action as it relates to certain parties and claims.

#### **Third Defense**

186. Plaintiff's claims are barred by the applicable statute of limitations.

#### **Fourth Defense**

187. Plaintiff's claims are barred by the doctrine of laches.

#### **Fifth Defense**

188. At all relevant times, the knowledge of other persons and entities, and the

ability of such other persons and entities to take action to prevent the injuries of which the plaintiff now complains, may have been superior to that of Answering Defendants, and therefore, if there was any duty to intercede to protect plaintiff, the duty may have been on those other persons and entities and not on Answering Defendants.

**Sixth Defense**

189. Plaintiff's alleged injuries, if any, may have been the result of acts or omissions of individuals or parties over which Answering Defendants had no control.

**Seventh Defense**

190. Answering Defendants at all times relevant hereto complied with all applicable standards, policies and federal, state and other regulations and laws.

**Eighth Defense**

191. Any negligence allegedly attributable to Answering Defendants was not the proximate cause of plaintiff's alleged injuries.

**Ninth Defense**

192. Answering Defendants are not liable for the intentional torts committed by other individuals or parties who are not Answering Defendants.

**Tenth Defense**

193. Plaintiff's claims for punitive damages, breach of contract, breach of implied covenant of good faith and fair dealing, gross negligence, and/or negligence are barred and/or limited by applicable state and federal constitutional provisions.

**Eleventh Defense**

194. The First Amended Complaint fails to specify any willful or wanton conduct on the part of Answering Defendants, and therefore, all claims for and references to the recovery of special damages in the First Amended Complaint must be stricken.

**Thirteenth Defense**

195. The First Amended Complaint fails to allege with specificity any acts, actions or conduct on the part of Answering Defendants which constitute fraud as required by Delaware law, and therefore, all claims and/or damages based upon allegations of fraud must be stricken.

**Fourteenth Defense**

196. The First Amended Complaint fails to allege with specificity any acts, actions or conduct on the part of Answering Defendants which constitute conspiracy as required by Delaware law, and therefore, all claims and/or damages based upon allegations of conspiracy must be stricken.

**Fifteenth Defense**

197. Specifically as to any alleged breach of contract claim or breach of the implied covenant of good faith and fair dealing, the plaintiff fails to state a claim as to the existence or breach of any such alleged contract and/or covenant.

**Sixteenth Defense**

198. To the extent plaintiff's claims are based on any purported contract or other agreement, they are barred by the statute of frauds.

**Seventeenth Defense**

199. To the extent plaintiff's claims are based on repressed or recovered memory, they are not cognizable in this Court.

**Eighteenth Defense**

200. Application of the so-called repressed or recovered memory theory under the circumstances in this case is barred by state and federal constitutional provisions.

**Nineteenth Defense**

201. The "Child Victims Act," 10 DEL. C. § 8145, violates the Delaware Constitution and the United States Constitution.

**Twentieth Defense**

202. Application of the "Child Victims Act," 10 DEL. C. § 8145 under the circumstances in this case is barred by state and federal constitutional provisions.

**Twenty-First Defense**

203. Specifically as it relates to Defendant Bishop Saltarelli, the First Amended Complaint fails to state a claim upon which relief may be granted as a matter of applicable Delaware corporate law.

**Twenty-Second Defense**

204. Answering Defendants adopt, invoke and incorporate by reference any affirmative defense asserted by any other defendant.

**MOTION TO STRIKE**

205. The First Amended Complaint, particularly in sections III.A. and B., contains redundant, immaterial and impertinent matter which must be stricken.

206. The First Amended Complaint fails to allege any acts, actions or conduct on the part of Answering Defendants that would constitute fraud or conspiracy with specificity as required by Delaware law, and, therefore, all claims and/or damages based on the allegations of fraud or conspiracy must be stricken as to Answering Defendants.

**CROSSCLAIMS FOR CONTRIBUTION AND INDEMNIFICATION**

207. Answering Defendants deny that they are liable to the plaintiff in any respect. However, in the event that Answering Defendants are held liable to the plaintiff, then they cross claim against each and every co-defendant, on the grounds that the conduct of one or several co-defendants was the primary cause of the damage sustained by the plaintiff and that Answering Defendants, if liable at all, are only secondarily liable. Answering Defendants, therefore, are entitled to indemnification from each and every co-defendant.

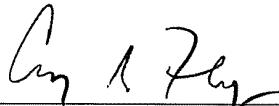
208. In the event Answering Defendants are held primarily liable to the plaintiff, then the alleged wrongful acts of the co-defendants are contributing causes of the damages sustained by the plaintiff and Answering Defendants are entitled to contribution in any amount which it may be required to pay the plaintiff as a result of the co-defendants' wrongful acts, based on the relative degrees of fault determined pursuant to the provisions of Delaware's Uniform Contribution Among Tortfeasor's Law, 10 DEL. C. § 6208.

**ANSWERS TO CROSSCLAIMS**

209. Answering Defendants deny any allegations of any cross claim which has been or may be asserted against it and demands that any such cross claim be dismissed.

Further, it is asserted that if liability is found, there should be an apportionment made by the trier of fact.

YOUNG CONAWAY STARGATT & TAYLOR, LLP



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and Bishop Michael A. Saltarelli

DATED: September 12, 2007

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

**DEFENDANT ST. ELIZABETH'S CATHOLIC CHURCH'S  
ANSWER TO THE FIRST AMENDED COMPLAINT**

1. Plaintiff's recitation of his legal claims requires no response from Defendant, St. Elizabeth's Catholic Church ("Answering Defendant"). As to the factual averments in this paragraph, Answering Defendant admits that Rev. Francis G. DeLuca was a priest in the Diocese of Wilmington. Answering Defendant admits that Rev. DeLuca was employed by St. Elizabeth's Catholic Church from February 28, 1966 to June 3, 1969. Answering Defendant further admits that, upon information and belief, Rev. DeLuca was convicted in 2007 in the State of New York for crimes he committed during and after 2002. The balance of the averments in this paragraph are denied as to Answering Defendant.

## **I. JURISDICTION**

2. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of these averments; therefore, they are denied.

3. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of these averments; therefore, they are denied.

## **II. THE PARTIES**

4. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of these averments; therefore, they are denied.

5. Denied as to any allegations of wrongdoing directed to Answering Defendant. Further, Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph; therefore, they are denied.

6. Answering Defendant admits that St. Elizabeth's is incorporated in Delaware and operates within the Diocese of Wilmington. It further admits that St. Elizabeth's is authorized to operate as a church and a school within the State of Delaware. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the balance of the averments in this paragraph; therefore, they are denied.

7. Answering Defendant admits that Rev. DeLuca is a Roman Catholic priest who was employed by the Diocese from 1958 to 1993. On information and belief, Answering Defendant admits that Rev. DeLuca is 78 years old and that he once lived at 100 Pastime Drive, Syracuse, New York. On information and belief, it is further admitted that Rev. DeLuca was convicted of sexual abuse and endangering the welfare of

a child, crimes he committed after he departed Delaware. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the balance of the averments in this paragraph; therefore, they are denied.

8. Answering Defendant admits that Rev. DeLuca was the assistant pastor at St. Elizabeth's from 1966 to 1969. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the balance of the averments in this paragraph; therefore, they are denied.

9. Denied as to any allegations of wrongdoing directed to Answering Defendant. Further, Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph; therefore, they are denied.

10. Denied as to any allegations of wrongdoing directed to Answering Defendant. Further, Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph; therefore, they are denied.

11. Denied as to any allegations of wrongdoing directed to Answering Defendant. Further, Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph; therefore, they are denied.

12. Denied as to any allegations of wrongdoing directed to Answering Defendant. Further, Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph; therefore, they are denied.

13. Denied as to Answering Defendant. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the balance of the averments in this paragraph; therefore, they are denied.

14. Denied as to Answering Defendant. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the balance of the averments in this paragraph; therefore, they are denied.

### **III. FACTS GIVING RISE TO THE ACTION**

#### **A. Institutional Knowledge of Clergy Sexual Abuse Leading to the Underlying**

##### **Gross Negligence**

15. Answering Defendant admits that Monsignor J. Thomas Cini is the Vicar General for Administration of the Diocese and that he testified under oath in July 2007 that the Catholic Church has designed provisions to prevent child abuse since the 1880s. Denied as to any allegations of wrongdoing directed to Answering Defendant. Further, Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph; therefore, they are denied.

16. Admitted.

17. Admitted.

18. Denied as to Answering Defendant.

19. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph; therefore, they are denied.

20. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph; therefore, they are denied.

21. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph; therefore, they are denied.

22. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph; therefore, they are denied.

23. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph; therefore, they are denied.

24. Answering Defendant admits that the Catholic Church has made efforts to curb the sexual abuse of children. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the balance of the averments in this paragraph; therefore, they are denied.

25. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph; therefore, they are denied.

**B. Institutional Secrecy Regarding Clergy Sexual Abuse Leading to the Underlying Gross Negligence.**

26. Denied as to Answering Defendant. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the balance of the averments in this paragraph; therefore, they are denied.

27. Denied as to Answering Defendant. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the balance of the averments in this paragraph; therefore, they are denied.

28. Denied as to Answering Defendant. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the balance of the averments in this paragraph; therefore, they are denied.

29. Denied as to any allegations of wrongdoing directed to Answering Defendant. Further, Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph; therefore, they are denied.

30. Denied as to any allegations of wrongdoing directed to Answering Defendant. Further, Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph; therefore, they are denied.

31. Denied as to any allegations of wrongdoing directed to Answering Defendant. Further, Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph; therefore, they are denied.

32. Denied as to any allegations of wrongdoing directed to Answering Defendant. Further, Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph; therefore, they are denied.

33. Denied as to any allegations of wrongdoing directed to Answering Defendant. Further, Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph; therefore, they are denied.

34. Denied as to any allegations of wrongdoing directed to Answering Defendant. Further, Answering Defendant is without knowledge or information

sufficient to form a belief as to the truth of the averments in this paragraph; therefore, they are denied.

35. Denied as to Answering Defendant. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the balance of the averments in this paragraph; therefore, they are denied.

**C. DeLuca's History of Pedophilic Sexual Molestation and the Underlying Intentional and Negligent Tort Claims.**

36. Denied as to Answering Defendant. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the balance of the averments in this paragraph; therefore, they are denied.

37. Denied as to any allegations of wrongdoing directed to Answering Defendant. Further, Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph; therefore, they are denied.

38. Denied as to any allegations of wrongdoing directed to Answering Defendant. On information and belief, admitted that parents of a victim in 1966 alleged that their son had been abused by Rev. DeLuca. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the balance of the averments in this paragraph; therefore, they are denied.

39. Plaintiff's legal contentions require no response from Answering Defendant at this time. Answering Defendant admits it had a duty to protect children from clerical abuse. Answering Defendant is without knowledge or information

sufficient to form a belief as to the truth of the balance of the averments in this paragraph; therefore, they are denied.

40. Plaintiff's legal contentions require no response from Answering Defendant at this time. Answering Defendant admits is had a duty to protect children from clerical abuse. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the balance of the averments in this paragraph; therefore, they are denied.

41. Plaintiff's legal contentions require no response from Answering Defendant at this time. Answering Defendant admits is had a duty to protect children from clerical abuse. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the balance of the averments in this paragraph; therefore, they are denied.

42. Answering Defendant admits that the name of at least one alleged victim of Rev. DeLuca has been made public. It is denied that Rev. DeLuca was an agent of Answering Defendant. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the balance of the averments in this paragraph; therefore, they are denied.

43. Answering Defendant admits the Diocese has made public its receipt of admitted, corroborated, or otherwise substantiated allegations of sexual abuse of minors by Rev. DeLuca. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the balance of the averments in this paragraph; therefore, they are denied.

44. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph; therefore, they are denied.

45. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph; therefore, they are denied.

#### **D. Agency**

46. Answering Defendant admits that Rev. DeLuca was permitted to perform priestly duties within the Diocese. Admitted further that Rev. DeLuca performed priestly duties for Answering Defendant. The balance of the averments in this paragraph are denied.

47. Plaintiff's legal contentions require no response from Answering Defendant at this time. Answering Defendant admits that Rev. DeLuca was a priest permitted to perform in the Diocese.

48. Denied as to Answering Defendant. Further, Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph; therefore, they are denied.

49. Denied as to Answering Defendant. Further, Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph; therefore, they are denied.

50. Denied as to Answering Defendant. Further, Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph; therefore, they are denied.

51. Denied as to Answering Defendant. Further, Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph; therefore, they are denied.

52. Denied as to any allegations of wrongdoing directed to Answering Defendant. Further, Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph; therefore, they are denied.

#### **E. Fiduciary Duties**

53. Plaintiff's legal contentions require no response from Answering Defendant at this time. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the balance of the averments in this paragraph; therefore, they are denied.

54. Plaintiff's legal contentions require no response from Answering Defendant at this time. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the balance of the averments in this paragraph; therefore, they are denied.

55. Plaintiff's legal contentions require no response from Answering Defendant at this time. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the balance of the averments in this paragraph; therefore, they are denied.

56. Plaintiff's legal contentions require no response from Answering Defendant at this time. Answering Defendant is without knowledge or information

sufficient to form a belief as to the truth of the balance of the averments in this paragraph; therefore, they are denied.

57. Plaintiff's legal contentions require no response from Answering Defendant at this time. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the balance of the averments in this paragraph; therefore, they are denied.

58. Plaintiff's legal contentions require no response from Answering Defendant at this time. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the balance of the averments in this paragraph; therefore, they are denied.

#### **F. Plaintiff's Background**

59. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph; therefore, they are denied.

60. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph; therefore, they are denied.

61. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph; therefore, they are denied.

62. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph; therefore, they are denied.

63. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph; therefore, they are denied.

64. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph; therefore, they are denied.

65. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph; therefore, they are denied.

66. Plaintiff's legal contentions require no response from Answering Defendant at this time. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the balance of the averments in this paragraph; therefore, they are denied.

#### **G. DeLuca's Earlier Sexual Crimes**

67. Denied as to any allegations of wrongdoing directed to Answering Defendant. Further, Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph; therefore, they are denied.

68. Denied as to any allegations of wrongdoing directed to Answering Defendant. Further, Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph; therefore, they are denied.

69. Denied as to any allegations of wrongdoing directed to Answering Defendant. Further, Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph; therefore, they are denied.

70. Denied as to any allegations of wrongdoing directed to Answering Defendant. Further, Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph; therefore, they are denied.

71. Denied as to any allegations of wrongdoing directed to Answering Defendant. Further, Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph; therefore, they are denied.

72. Denied as to any allegations of wrongdoing directed to Answering Defendant. Further, Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph; therefore, they are denied.

73. Denied as to any allegations of wrongdoing directed to Answering Defendant. Further, Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph; therefore, they are denied.

74. Denied as to any allegations of wrongdoing directed to Answering Defendant. Further, Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph; therefore, they are denied.

75. Denied as to any allegations of wrongdoing directed to Answering Defendant. Further, Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph; therefore, they are denied.

76. Denied as to any allegations of wrongdoing directed to Answering Defendant. Further, Answering Defendant is without knowledge or information

sufficient to form a belief as to the truth of the averments in this paragraph; therefore, they are denied.

77. Answering Defendant admits that the Diocesan attorney testified before the House of Representatives on May 29, 2007, regarding a 1966 report of abuse by Rev. DeLuca. The balance of the averments in this paragraph are denied.

78. Answering Defendant admits that Rev. DeLuca was transferred to St. Elizabeth's Parish in 1966. The balance of the averments in this paragraph are denied.

#### **H. Further Reckless and Gross Breach of Duty**

79. Denied as to Answering Defendant. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the balance of the averments in this paragraph; therefore, they are denied.

80. Denied as to Answering Defendant. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the balance of the averments in this paragraph; therefore, they are denied.

81. Denied as to Answering Defendant. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the balance of the averments in this paragraph; therefore, they are denied.

82. Denied as to Answering Defendant. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the balance of the averments in this paragraph; therefore, they are denied.

83. Denied as to Answering Defendant. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the balance of the averments in this paragraph; therefore, they are denied.

84. Denied as to Answering Defendant. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the balance of the averments in this paragraph; therefore, they are denied.

85. Denied as to Answering Defendant. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the balance of the averments in this paragraph; therefore, they are denied.

86. Denied as to Answering Defendant. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the balance of the averments in this paragraph; therefore, they are denied.

### **I. DeLuca's Sexual Crimes Against Plaintiff**

87. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph; therefore, they are denied.

88. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph; therefore, they are denied.

89. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph; therefore, they are denied.

90. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph; therefore, they are denied.

91. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph; therefore, they are denied.

92. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph; therefore, they are denied.

93. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph; therefore, they are denied.

94. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph; therefore, they are denied.

95. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph; therefore, they are denied.

96. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph; therefore, they are denied.

97. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph; therefore, they are denied.

98. Denied as to Answering Defendant. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the balance of the averments in this paragraph; therefore, they are denied.

99. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph; therefore, they are denied.

100. Answering Defendant admits that Rev. DeLuca was removed by the Diocese in 1993 and that he moved to Syracuse, New York. It is further admitted, on information and belief, that Rev. DeLuca was arrested in Syracuse, New York in October 2006 on charges stemming from the sexual abuse of a minor. It is further admitted, on information and belief, that in June 2007 Rev. DeLuca pleaded guilty to two charges of sexual abuse and one charge of endangering the welfare of a child. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the balance of the averments in this paragraph; therefore, they are denied.

101. Answering Defendant admits that in November 2006 the Diocese publicized the names of priests about whom the Diocese had received substantiated allegations of sexual abuse of a minor. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the balance of the averments in this paragraph; therefore, they are denied.

102. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph; therefore, they are denied.

103. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph; therefore, they are denied.

104. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph; therefore, they are denied.

105. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph; therefore, they are denied.

106. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph; therefore, they are denied.

107. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph; therefore, they are denied.

#### **J. Causation**

108. Denied as to Answering Defendant.

#### **K. Injuries**

109. Denied as to Answering Defendant. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the balance of the averments in this paragraph; therefore, they are denied.

110. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph; therefore, they are denied.

111. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph; therefore, they are denied.

112. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph; therefore, they are denied.

113. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph; therefore, they are denied.

114. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph; therefore, they are denied.

115. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph; therefore, they are denied.

116. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph; therefore, they are denied.

#### **COUNT I (Assault and Battery)**

117. Answering Defendant incorporates its responses to paragraphs 1 through 116 as though set forth fully herein.

118. Answering Defendant denies that it is legally responsible for any intentional torts of Rev. DeLuca. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph; therefore, they are denied.

119. Denied as to Answering Defendant. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the balance of the averments in this paragraph; therefore, they are denied.

120. Answering Defendant denies that it has denied any right of the plaintiff. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the balance of the averments in this paragraph; therefore, they are denied.

### **COUNT II (Negligence)**

121. Answering Defendant incorporates its responses to paragraphs 1 through 120 as though set forth fully herein.

122. Plaintiff's legal contentions require no response from Answering Defendant at this time. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the balance of the averments in this paragraph; therefore, they are denied.

123. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph; therefore, they are denied.

124. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph; therefore, they are denied.

125. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph; therefore, they are denied.

126. Denied as to Answering Defendant. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the balance of the averments in this paragraph; therefore, they are denied.

### **COUNT III (Gross Negligence)**

127. Answering Defendant incorporates its responses to paragraphs 1 through 126 as though set forth fully herein.

128. Answering Defendant admits that it had a duty to protect minors, including plaintiff, from sexual abuse. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the balance of the averments in this paragraph; therefore, they are denied.

129. Denied as to Answering Defendant. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the balance of the averments in this paragraph; therefore, they are denied.

130. Denied as to Answering Defendant. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the balance of the averments in this paragraph; therefore, they are denied.

131. Denied as to Answering Defendant. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the balance of the averments in this paragraph; therefore, they are denied.

132. Denied as to Answering Defendant. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the balance of the averments in this paragraph; therefore, they are denied.

133. Denied as to Answering Defendant. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the balance of the averments in this paragraph; therefore, they are denied.

134. Denied as to Answering Defendant. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the balance of the averments in this paragraph; therefore, they are denied.

**COUNT IV (Breach of Fiduciary Duty)**

135. Answering Defendant incorporates its responses to paragraphs 1 through 134 as though set forth fully herein.

136. Plaintiff's legal contentions require no response from Answering Defendant at this time. Denied as to any allegations of wrongdoing directed to Answering Defendant. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the balance of the averments in this paragraph; therefore, they are denied.

137. Denied as to Answering Defendant. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the balance of the averments in this paragraph; therefore, they are denied.

138. Denied as to Answering Defendant. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the balance of the averments in this paragraph; therefore, they are denied.

139. Denied as to Answering Defendant. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the balance of the averments in this paragraph; therefore, they are denied.

140. Denied as to Answering Defendant. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the balance of the averments in this paragraph; therefore, they are denied.

**COUNT V (Fraud)**

141. Answering Defendant incorporates its responses to paragraphs 1 through 140 as though set forth fully herein.

142. Denied as to Answering Defendant. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the balance of the averments in this paragraph; therefore, they are denied.

143. Denied as to Answering Defendant. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the balance of the averments in this paragraph; therefore, they are denied.

144. Denied as to Answering Defendant. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the balance of the averments in this paragraph; therefore, they are denied.

145. Denied as to Answering Defendant. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the balance of the averments in this paragraph; therefore, they are denied.

146. Denied as to Answering Defendant. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the balance of the averments in this paragraph; therefore, they are denied.

147. Denied as to Answering Defendant. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the balance of the averments in this paragraph; therefore, they are denied.

148. Denied as to Answering Defendant. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the balance of the averments in this paragraph; therefore, they are denied.

**COUNT VI (Repressed Memory – Assault and Battery)**

149. Answering Defendant incorporates its responses to paragraphs 1 through 148 as though set forth fully herein.

150. Answering Defendant denies that it is legally responsible for any intentional torts of Rev. DeLuca. Plaintiff's legal contentions require no response from Answering Defendant at this time. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the balance of the averments in this paragraph; therefore, they are denied.

151. Denied as to Answering Defendant. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the balance of the averments in this paragraph; therefore, they are denied.

152. Denied as to Answering Defendant. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the balance of the averments in this paragraph; therefore, they are denied.

153. Denied as to Answering Defendant. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the balance of the averments in this paragraph; therefore, they are denied.

154. Denied as to Answering Defendant. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the balance of the averments in this paragraph; therefore, they are denied.

**COUNT VII (Repressed Memory – Negligence)**

155. Answering Defendant incorporates its responses to paragraphs 1 through 154 as though set forth fully herein.

156. Answering Defendant admits that it had a duty to protect minors, including plaintiff, from sexual abuse. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the balance of the averments in this paragraph; therefore, they are denied.

157. Denied as to Answering Defendant. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the balance of the averments in this paragraph; therefore, they are denied.

158. Denied as to Answering Defendant. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the balance of the averments in this paragraph; therefore, they are denied.

159. Denied as to Answering Defendant. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the balance of the averments in this paragraph; therefore, they are denied.

160. Denied as to Answering Defendant. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the balance of the averments in this paragraph; therefore, they are denied.

**COUNT VIII (Breach of Contract/Breach of Implied Covenant of Good Faith and Fair Dealing)**

161. Answering Defendant incorporates its responses to paragraphs 1 through 160 as though set forth fully herein.

162. Denied as to Answering Defendant. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the balance of the averments in this paragraph; therefore, they are denied.

163. Denied as to Answering Defendant. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the balance of the averments in this paragraph; therefore, they are denied.

164. Answering Defendant denies that there was a contract with the plaintiff. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the balance of the averments in this paragraph; therefore, they are denied.

165. Answering Defendant denies that there was a contract with the plaintiff. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the balance of the averments in this paragraph; therefore, they are denied.

166. Answering Defendant denies that there was a contract with the plaintiff. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the balance of the averments in this paragraph; therefore, they are denied.

167. Denied as to Answering Defendant. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the balance of the averments in this paragraph; therefore, they are denied.

168. Denied as to Answering Defendant. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the balance of the averments in this paragraph; therefore, they are denied.

169. Answering Defendant denies that there was a contract. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the balance of the averments in this paragraph; therefore, they are denied.

170. Answering Defendant denies that there was a contract. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the balance of the averments in this paragraph; therefore, they are denied.

171. Answering Defendant denies that there was a contract. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the balance of the averments in this paragraph; therefore, they are denied.

172. Answering Defendant denies that there was a contract. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the balance of the averments in this paragraph; therefore, they are denied.

173. Answering Defendant denies that there was a contract. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the balance of the averments in this paragraph; therefore, they are denied.

174. Denied as to Answering Defendant.

175. Denied as to Answering Defendant. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the balance of the averments in this paragraph; therefore, they are denied.

176. Answering Defendant denies that there was a contract. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the balance of the averments in this paragraph; therefore, they are denied.

177. Answering Defendant denies that there was a contract or any further contracts. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the balance of the averments in this paragraph; therefore, they are denied.

178. Answering Defendant denies that there was a contract or any further contracts. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the balance of the averments in this paragraph; therefore, they are denied.

179. Answering Defendant denies that there was a contract or any further contracts. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the balance of the averments in this paragraph; therefore, they are denied.

180. Denied as to Answering Defendant.

181. Answering Defendant denies that there was a contract or any further contracts. Answering Defendant denies that there was any breach by Answering Defendant. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the balance of the averments in this paragraph; therefore, they are denied.

182. Answering Defendant denies that there was a contract or any further contracts. Answering Defendant denies that there was any breach by Answering Defendant. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the balance of the averments in this paragraph; therefore, they are denied.

183. Answering Defendant denies that it has denied any right of the plaintiff. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the balance of the averments in this paragraph; therefore, they are denied.

**AFFIRMATIVE DEFENSES**

**AFFIRMATIVE DEFENSES**  
**FIRST AFFIRMATIVE DEFENSE**

184. The Complaint fails to state a claim upon which relief can be granted as to answering defendant.

**SECOND AFFIRMATIVE DEFENSE**

185. The Court lacks jurisdiction over the subject matter as it relates to certain parties and claims.

**THIRD AFFIRMATIVE DEFENSE**

186. Plaintiff's claims are barred by the applicable statute of limitations.

**FOURTH AFFIRMATIVE DEFENSE.**

187. Plaintiff's claims are barred by the doctrine of laches.

**FIFTH AFFIRMATIVE DEFENSE**

188. At all relevant times, the knowledge of other persons and entities, and the ability of such other persons and entities to take action to prevent the injuries of which the plaintiff now complains, was superior to that of the answering defendant, and, therefore, if there was any duty to intercede to protect plaintiff, the duty was on those other persons and entities and not on the answering defendant.

**SIXTH AFFIRMATIVE DEFENSE**

189. Plaintiff's injuries from the alleged allegations, if any, were solely and proximately caused by the negligence or acts of some person or persons, or some other entity not a party to this lawsuit, or were solely and proximately caused by the acts of some other person and not by the answering defendant.

**SEVENTH AFFIRMATIVE DEFENSE**

190. The answering defendant at all times relevant hereto complied with all applicable standards, policies and federal, state and other regulations and laws.

**EIGHTH AFFIRMATIVE DEFENSE**

191. Answering Defendant is not liable for the intentional torts of any of its predecessors-in-interest or intentional torts committed by other individuals or parties who are not the answering defendant.

**NINTH AFFIRMATIVE DEFENSE**

192. Plaintiff's claims for punitive damages, breach of contract, breach of implied covenant of good faith and fair dealing, gross negligence, and/or negligence are barred and/or limited by applicable state and federal constitutional provisions.

**TENTH AFFIRMATIVE DEFENSE**

193. The First Amended Complaint fails to specify any willful or wanton conduct on the part of the Answering Defendant which constitute fraud as required by Delaware law, and therefore all claims and/or damages based upon allegations of fraud must be stricken.

**ELEVENTH AFFIRMATIVE DEFENSE**

194. The First Amended Complaint fails to specify any willful or wanton conduct on the part of the Answering Defendant, and therefore all claims for and references to the recovery of special damages in the First Amended Complaint must be stricken.

**TWELFTH AFFIRMATIVE DEFENSE**

195. The First Amended Complaint fails to allege with specificity any acts, actions, or conduct on the part of Answering Defendant which constitute conspiracy as required by Delaware Law, and therefore all claims and/or damages based upon allegations of conspiracy must be stricken.

**THIRTEENTH AFFIRMATIVE DEFENSE**

196. As to any alleged breach of contract claim or breach of the implied covenant of good faith and fair dealing, the plaintiff fails to state a claim as to the existence or breach of any such alleged contract and/or covenant.

**FOURTEENTH AFFIRMATIVE DEFENSE**

197. To the extent plaintiff's claims are based on any purported contract or other agreement, they are barred by the statute of frauds.

**FIFTEENTH AFFIRMATIVE DEFENSE**

198. To the extent plaintiff's claims are based on a legal theory of repressed or recovered memory, they are not cognizable in this Court.

**SIXTEENTH AFFIRMATIVE DEFENSE**

199. Application of the so-called repressed or recovered memory theory under the circumstances in this case is barred by state and federal constitutional provisions.

**SEVENTEENTH AFFIRMATIVE DEFENSE**

200. Any negligence allegedly attributable to Answering Defendant was not the proximate cause of plaintiff's alleged injuries.

**EIGHTEENTH AFFIRMATIVE DEFENSE**

201. The "Child Victim's Act," 10 Del. C. § 8145, violated the Delaware Constitution and the United States Constitution.

**NINETEENTH AFFIRMATIVE DEFENSE**

202. Application of the "Child Victim's Act," 10 Del. C. § 8145, under the circumstances in this case is barred by state and federal constitutional provisions.

**TWENTIETH AFFIRMATIVE DEFENSE**

203. Answering Defendant adopts, invokes, and incorporates by reference any affirmative defense asserted by any other defendant.

**MOTION TO STRIKE**

204. The First Amended Complaint fails to allege any acts, actions, or conduct on the part of Answering Defendant that constitutes fraud or conspiracy with specificity as required by Delaware law; therefore, all claims and/or damages based on the allegations of fraud or conspiracy must be stricken as to Answering Defendant.

**MOTION TO DISMISS**

205. The First Amended Complaint must be dismissed against Answering Defendant on the basis of this Court's lack of subject matter jurisdiction pursuant to

FRCP 12(b)(1). Plaintiff relies on 10 Del. C. § 8145 (Senate Bill 29 – “Child Victim’s Act”) in order to revive and bring claims of abuse dating back nearly forty (40) years. However, the text of the Child Victim’s Act clearly requires that claims brought pursuant to the Act are to be brought in the Superior Court of Delaware. Therefore, plaintiff’s claims must be dismissed from the United States District Court for the District of Delaware.

**CROSSCLAIMS FOR CONTRIBUTION AND INDEMNIFICATION**

206. The answering defendant denies that it is liable to the plaintiff in any respect. However, in the event that the answering defendant is held liable to the plaintiff, then it cross claims against each and every co-defendant, on the grounds that the conduct of one or several co-defendants, was the primary cause of the damage sustained by the plaintiff and that the answering defendant, if liable at all, is only secondarily liable. The answering defendant, therefore, is entitled to indemnification from each and every co-defendant.

207. In the event the answering defendant is held primarily liable to the plaintiff, then the alleged wrongful acts of the co-defendants are contributing causes of the damages sustained by the plaintiff, and the answering defendant is entitled to contribution in any amount which they may be required to pay the plaintiff as a result of the co-defendants’ wrongful acts, based on the relative degrees of fault determined pursuant to the provisions of Delaware’s Uniform Contribution Among Tortfeasors’s Law, 10 Del. C. § 6208.

**ANSWERS TO CROSSCLAIMS**

208. The answering defendant denies allegations of any cross claim which has been or may be asserted against it and demands that any such cross claim be dismissed. Further, it is asserted that if liability is found, there should be apportionment made by the trier of fact.

**WHEREFORE**, St. Elizabeth's Catholic Church respectfully demands the Complaint be dismissed with costs assessed to the plaintiff.

ELZUFON AUSTIN REARDON  
TARLOV & MONDELL, P.A.

*/s/ Mark L. Reardon*

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Dated: September 28, 2007  
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SPONSOR: Sen. Peterson & Sen. McBride ; Rep. Hudson & Rep. Lavelle  
 Sens. Reps. Longhurst  
 Sorenson Gilligan Plant  
 Sokola Mitchell Carey  
 Bunting Keeley Cathcart  
 Blevins Ennis Hocker  
 Connor Mulrooney Lee  
 Copeland Johnson Maier  
 Henry McWilliams Manolakos  
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 Cloutier Schooley Short  
 Amick Hall-Long Valihura  
 & Kowalko Brady  
 Marshall Spence  
 Smith  
 Ewing  
 &  
 Lofink

DELAWARE STATE SENATE  
 144th GENERAL ASSEMBLY

SENATE BILL NO. 29

AN ACT TO AMEND TITLE 10 OF THE DELAWARE CODE BY REMOVING THE STATUTE OF LIMITATIONS FOR CIVIL SUITS RELATING TO CHILD SEXUAL ABUSE AND ADDING RELATED PROVISIONS REGARDING SUCH SUITS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1       Section 1. Title 10 of the Delaware Code is hereby amended by adding to Chapter 81 a new Section 8145 which  
 2       shall read as follows:

3               “§8145. Civil suits for damages based upon sexual abuse of a minor by an adult.

4               (a) A cause of action based upon the sexual abuse of a minor by an adult may be filed in the Superior Court of  
 5               this State at any time following the commission of the act or acts that constituted the sexual abuse. A civil  
 6               cause of action for sexual abuse of a minor shall be based upon sexual acts that would constitute a criminal  
 7               offense under the Delaware Code.

8               (b) For a period of two years following the effective date of this bill, victims of child sexual abuse that occurred  
 9               in this State who have been barred from filing suit against their abusers by virtue of the expiration of the  
 10               former civil statute of limitations, shall be permitted to file those claims in the Superior Court of this State. If  
 11               the person committing the act of sexual abuse against a minor was employed by an institution, agency, firm,  
 12               business, corporation, or other public or private legal entity that owned a duty of care to the victim, or the  
 13               accused and the minor were engaged in some activity over which the legal entity had some degree of

14 responsibility or control, damages against the legal entity shall be awarded under this subsection only if there  
15 is a finding of gross negligence on the part of the legal entity

16 (c) A person against whom a suit is filed may recover attorney's fees where the Court determines that a false  
17 accusation was made with no basis in fact and with malicious intent. A verdict in favor of the accused shall  
18 not be the sole basis for a determination that an accusation was false. The Court must make an independent  
19 finding of an improper motive to award attorneys' fees under this section."

20 Section 2. This bill shall be known as the "Child Victim's Act".

21 Section 3. If any provision of this act or the applications thereof to any person or circumstance is held invalid, the  
22 invalidity shall not affect other provisions or applications of the act which shall be given effect without the invalid  
23 provision or application; and, to that end, the provisions of this act are declared to be severable.

#### SYNOPSIS

This Bill repeals the statute of limitations in civil suits relating to child sexual abuse cases and provides a two-year "window" in which victims can bring a civil action in cases previously barred by the current statute.

Author: Senator Peterson



**In The Matter Of:**

# **Sentate of Delaware**

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**Senate Bill 29**

**Tape Recorded Hearing**

**April 4, 2007**

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Tape Recorded Hearing  
Before the Senate of Delaware

IN RE: SENATE BILL 29: An Act to amend Title 10 of the Delaware Code by removing the statute of limitations for civil suits relating to child sexual abuse and adding related provisions regarding such suits.

The following is an audiotaped hearing before the House Judiciary Committee held on April 4, 2007, transcribed by Elaine G. Parrish, RPR, CRR.

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<p style="text-align: right;">Page 2</p> <p>1 SENATOR McBRIDE: You know, I can only 2 imagine, I was sitting here listening to that, listening 3 to some of these other people, like, you know, can't 4 even begin to imagine unless you're a victim, I mean, 5 what you go through in something like that. But I guess 6 it's very unfortunate but I assume there are many people 7 that go to their grave and never came forward.</p> <p>8 MS. MARCI HAMILTON: Some of the most 9 moving e-mails I have received are from people who are 10 in their 70s and 80s who are only coming forward to me 11 because it's anonymous, it's on e-mail. They know that 12 I'm -- care about the issue. But they want to tell 13 someone before they die.</p> <p>14 SENATOR McBRIDE: This Bill that we have 15 before us, it seems to me, and it seems from what you're 16 saying, would provide yet another mechanism, another 17 incentive, if you will, for people to come forward and 18 talk about a very tragic part of their life.</p> <p>19 MS. MARCI HAMILTON: Well, once one victim 20 identifies a perpetrator we didn't know about before you 21 can be sure that five, six, ten, 20 victims are down the 22 road and that's what we found out in California.</p> <p>23 SENATOR McBRIDE: Well, that happened here 24 in Delaware.</p>	<p>1 objection, please come forward, and please restate your 2 name for the record and who you represent.</p> <p>3 FATHER THOMAS DOYLE: My name is Thomas 4 Doyle.</p> <p>5 SENATOR ADAMS: Thank you, Father Doyle.</p> <p>6 Senator Peterson.</p> <p>7 SENATOR PETERSON: Thank you, 8 Mr. President. Father Doyle, welcome to the Delaware 9 State Senate and thank you for driving from Virginia to 10 be here today.</p> <p>11 FATHER THOMAS DOYLE: Thank you.</p> <p>12 SENATOR PETERSON: Would you please tell 13 the members of the Senate about your background and 14 credentials and the findings of the extensive research 15 that you have done on the subject of child sexual abuse 16 cases?</p> <p>17 FATHER THOMAS DOYLE: Thank you. 18 Mr. President, Senators, guests, and most important, 19 victims and survivors who are here today. My name is 20 Father Thomas Doyle. I am a Roman Catholic priest. I 21 was ordained in 1970 which is a few years ago. I belong 22 to the Dominican order which was founded in the 13th 23 century and still exists. In my years as a priest I 24 have served in a number of different types of</p>
<p style="text-align: right;">Page 3</p> <p>1 MS. MARCI HAMILTON: Yeah.</p> <p>2 SENATOR McBRIDE: If you look at the DeLuca 3 case and I am going to talk about it later because there 4 is in my opinion no better example of why we want to 5 pass this Bill because of what happened right here in 6 Delaware. Thank you.</p> <p>7 SENATOR ADAMS: Thank you, Senator McBride. 8 Senator Peterson.</p> <p>9 SENATOR PETERSON: Yes, Mr. President, if 10 there are no other questions, I ask that the witness be 11 excused.</p> <p>12 SENATOR ADAMS: Seeing no further 13 questions, the witness may be excused. Thank you, 14 Professor Hamilton. Senator Peterson.</p> <p>15 SENATOR PETERSON: We're not allowed to do 16 that.</p> <p>17 SENATOR ADAMS: Not supposed to do that. I 18 didn't bang the gavel too hard. Senator Peterson.</p> <p>19 SENATOR PETERSON: Thank you, 20 Mr. President.</p> <p>21 Mr. President, I'd like to request personal 22 privilege of the floor for Father Tom Doyle.</p> <p>23 SENATOR ADAMS: Privilege of the floor has 24 been requested for Father Tom Doyle. Seeing no</p>	<p>1 assignments: As a parish priest, an administrator, a 2 university professor. I have worked in a number of 3 places throughout the world. The assignment, the 4 ministry I have been most happy with and proud of is I 5 served as a Catholic chaplain in the United States Air 6 Force for almost 20 years. In fact, my first assignment 7 was here at Dover Air Force base which brings back many, 8 many happy memories being here in this state and at that 9 base. While I was on active duty I served in a number 10 of conflicts, the most recent one being Operation Iraqi 11 Freedom in Iraq in 2003.</p> <p>12 I was asked to offer my professional 13 credentials which I do with, doesn't sound like with it 14 but with humility. I have five Master's Degrees in 15 among other things, philosophy, theology, Soviet 16 studies, political science and administration, I have a 17 doctorate in canon law, and I'm also a certified 18 licensed addictions therapist. My involvement in the 19 area of sexual abuse is primarily in the area of sexual 20 abuse by the clergy and sexual abuse by members of 21 institutions, both ecclesiastical or church institutions 22 and private institutions.</p> <p>23 It began in 1983 when at that time I was 24 working in the Vatican Embassy in Washington, D.C. I</p>

2 (Pages 2 to 5)

Page 6	Page 8
<p>1 was the staff lawyer, the staff canon lawyer or church  2 lawyer, and while serving in this position I was simply  3 asked to monitor the correspondence concerning a fairly  4 -- a very tragic case that arose out of the Diocese of  5 Lafayette in Louisiana. This case, which came to our  6 attention in 1984, received significant media attention  7 because of the extensive coverup that was revealed by  8 the Bishop and the Diocese of the perpetrator. The  9 perpetrator himself was eventually sentenced to 20 years  10 in prison and served ten years in prison, and shortly  11 after his release from prison he was rearrested for  12 having sexually abused the three-year-old son of his  13 next door neighbor. No one knows exactly how many young  14 boys this man violated. What is known is that they were  15 in the hundreds and several committed suicide as a  16 result of the trauma and the pain they suffered.</p> <p>17 Since that time I have been deeply involved  18 in the issue of sexual abuse, primarily sexual abuse by  19 the clergy. I have been involved in helping victims  20 find support, healing and justice. I have worked with  21 several hundred as a pastoral minister, as a supporter,  22 and as a friend. I have been with their families, with  23 their friends, with their attorneys and their  24 therapists. I have also had the opportunity over the</p>	<p>1 attorneys and victims in several other countries and in  2 hundreds more cases. I have published articles in  3 professional journals. I have been the author of  4 several sections of books and I have co-authored a book  5 on the history of this issue in the Roman Catholic  6 Church. And in the course of this very painful,  7 shocking and scandalous journey I have been forced to  8 accept the very painful fact and the shameful fact that  9 the church to which I have been associated and in which  10 has been an essential part of my own life, has  11 intentionally placed its own image, its power and its  12 financial stability far above the lives of the most  13 vulnerable in its midst. And I have regrettably  14 accepted the fact that those in positions of power have  15 forgotten that the church is not the clergy, it's not  16 the buildings, it's not the power structures, but it is  17 the people, and among those people, by far the most  18 important, are the most vulnerable, the most  19 marginalized and the most hurt.</p> <p>20 It's really shocking what any of us realize  21 when faced with the incontrovertible evidence that the  22 people most grievously harmed by religious bodies, by  23 churches in general, are their own faithful, devoted  24 followers.</p>
Page 7	Page 9
<p>1 years to work with a number of accused priests who have  2 called on my assistance for legal aid, support,  3 assistance and advice.</p> <p>4 Of all of the things I have done in  5 relation to the victims, which go over a period of 23  6 years, I consider the most important and the most  7 painful the fact that when I have been with them and  8 have been able to gain a bit of the trust I have  9 apologized to these men and women and their families for  10 what men in my profession and my church have done to  11 them. Without exception, and I have done this several  12 hundred times, without exception, I have been told that  13 this is the first time anyone from their church has  14 apologized to them or spoken to them in an understanding  15 and supportive way. And on reflecting upon this I find  16 it to be not only tragic but absolutely scandalous, that  17 a religious entity, a body that exists to serve and help  18 others with compassionate care, has allowed this  19 terrible tragedy to continue in its midst.</p> <p>20 I have been a consultant and an expert  21 witness in hundreds of civil cases and in some criminal  22 cases throughout the United States, in Canada, Ireland,  23 the United Kingdom, Australia, New Zealand, Mexico and  24 Israel. I have also been called upon to advise</p>	<p>1 Since 2002 the public has been exposed to  2 this terrible, dark underside that exists not only in  3 the Catholic Church but in other religious denominations  4 and in public and private institutions as well. The  5 proposed changes to the State Legislation here in  6 Delaware, these changes that are being urged in this  7 State and in several other States are not only about the  8 Catholic Church or about religious bodies, they are  9 about institutions and about our society in general. If  10 anything, the explosive experience of the Catholic  11 Church has served as a catalyst that has set off a  12 number of revelations about public institutions and  13 private life as well.</p> <p>14 And these revelations I believe can be  15 summed up thus: Number one, children and the vulnerable  16 have been devalued by institutions and by society  17 because they are powerless. They are overshadowed by  18 the specter of money and power. The churches and our  19 institutions in general will speak out about injustices  20 in institutions and in political situations other than  21 their own. We will cry out in vain oftentimes, we will  22 cry out loudly and impassionately for injustices that  23 are happening at someone else's hand. But when it's the  24 injustices and the harm and the hurt that we cause</p>

3 (Pages 6 to 9)

<p style="text-align: center;">Page 10</p> <p>1 amongst our own we remain silent, we circle the wagons, 2 we defend our own interests.</p> <p>3       Churches and institutions tend to hide and 4 deny internal problems that are less socially acceptable 5 and more potentially damaging than the problems that are 6 less so. The churches especially have hidden behind the 7 protections of the First Amendment in order to avoid 8 legal accountability for criminal behavior in their own 9 midst. The First Amendment protections do not allow my 10 church or any church to condone criminal behavior, 11 especially behavior that absolutely destroys the lives 12 of the most vulnerable and defenseless in their midst.</p> <p>13       We have learned a great deal about the 14 complex nature of sexual abusers, and, most important, 15 about sexual abuse and the violation of persons over the 16 past 25 years. When we look at the legislative changes 17 that are being proposed, one of the common objections, 18 one of the questions is why didn't these people speak 19 up. Why didn't these children run to a lawyer five days 20 after they were sexually abused. We have learned 21 because of this nightmare that sexual abuse is a 22 profound violation that has tragic physical, emotional, 23 psychological and spiritual consequences. That most 24 often - and I speak from a massive amount of experience</p>	<p style="text-align: center;">Page 12</p> <p>1 adults, they need our social, our political institutions 2 to help protect them.</p> <p>3       Most younger victims are abused around the 4 age of 12 and most only reveal their abuse by the age of 5 40. It's not that they will not come forward, it's that 6 they can not. They're engulfed by grief, by fear, by 7 shame, by an inability to even think that others have 8 experienced the same nightmare.</p> <p>9       The victims of clergy sexual abuse, 10 especially Catholic clergy sexual abuse, are especially 11 impacted because of the toxicity of the relationship 12 between the priest and the victim. Here we have victims 13 who were violated by those whom they placed almost total 14 and complete trust in and whom they believed takes the 15 place of God. And oftentimes when they're violated, and 16 I have heard this countless times, I thought God was 17 rejecting me. Why was this happening to me? What did I 18 do wrong? And this feeling of guilt and shame remains 19 for a lifetime.</p> <p>20       Why is legislative reform necessary? I 21 believe it's needed, especially in the cases -- case of 22 institutions and churches because these institutions and 23 the churches will not make the needed reforms on their 24 own. They will not take proactive measures to reach out</p>
<p style="text-align: center;">Page 11</p> <p>1 here - children who are sexually abused do not even know 2 the language to use to reveal this. They don't know 3 what happened to them.</p> <p>4       I spoke not long ago with a young woman who 5 was raped by a priest at the age of 13 in the hallway of 6 a building, in a hallway that connected the church and 7 the residence. She said I knew something terrible was 8 happening to me but I didn't know what it was. I didn't 9 know how to describe it to my mother. It felt shameful. 10 It felt dirty. It felt awful. This is common. This 11 young lady was not an exception.</p> <p>12       And I speak from personal experience, and I 13 will share this. In my own family, a member of my own 14 family now reaching the age of 19 was raped at the age 15 of 13 by two men, two adult men, and it was only until 16 very recently within the past couple of weeks that she 17 was able with a great deal of help from therapists to 18 acknowledge what had happened to her. Her life was 19 spiraling toward the end and her mother said to me, my 20 own sister, she said I'm thinking of the fact that 21 Regan, my niece, is going to have a very short lifespan. 22 That's duplicated by the thousands, by victims of 23 incest, victims of rape, victims of child abuse, by 24 members of institutions and by the clergy. They need</p>	<p style="text-align: center;">Page 13</p> <p>1 to victims. They will not take proactive measures to 2 intervene with sexual predators or to change a toxic 3 climate that protects sexual predators. In the case of 4 the Catholic Church, the State Catholic conferences in 5 many instances have bragged about the fact that the 6 Catholic Church has done more than any other institution 7 to bring about changes for the protection of children, 8 but the fact remains is that they have known about the 9 violation of children for decades and it has only been 10 since 2002, or perhaps a couple of years earlier in some 11 instances, that protection -- protective measures and 12 policies have been put in place. Why? For one reason 13 only, because of the intense pressure from the media and 14 from the civil courts and the Legislators that have 15 forced these actions to take place and yet they remain 16 defensive actions.</p> <p>17       The only thing that will change the 18 churches and private institutions and perhaps even 19 public institutions is a power greater than these, and 20 that comes from places like the State Senate of 21 Delaware. When legislation and the courts get involved 22 they are a power greater than the churches and they can 23 force them to act responsibly and to accept 24 accountability.</p>

4 (Pages 10 to 13)

1 I'd like to speak to some of the objections  
 2 that are often brought up with respect to legislative  
 3 change. One of the most common one is that this is a  
 4 ploy between greedy plaintiff attorneys and greedy  
 5 plaintiffs to get as much money as possible. This  
 6 objection on its face is insulting and re-victimizing.  
 7 The fact remains that most, if not all of the attorneys  
 8 representing plaintiffs do so on a contingency basis and  
 9 I have known hundreds in my involvement as an expert  
 10 witness and a consultant over 20 years, I have known a  
 11 number of attorneys who have taken countless cases on a  
 12 pro bono basis who have taken massive financial hits  
 13 themselves, but I do not know any attorneys who have  
 14 represented any religious denomination who have done so  
 15 on a pro bono basis, who have not continued to take  
 16 hourly fees and these hours mount up and the dollars  
 17 mount up.

18 I was asked one time when I was giving  
 19 testimony by a particularly aggressive and insulting  
 20 attorney who represented a Diocese, he said, are you  
 21 taking a fee for this? I looked him straight in the eye  
 22 and I said, yeah. Are you? He said, that's not the  
 23 point. I said, yes, it is the point.

24 I have already said that the vast majority

1 not even equipped to do but they did.  
 2 Legislation that looks back and allows  
 3 victims to come to court is legislation, I believe, as  
 4 Professor Hamilton said, that will open the courthouse  
 5 doors. The lawmakers are not being asked to judge the  
 6 cases and determine if there is enough evidence. It's  
 7 commonly said that how can we deal with these old cases?  
 8 They're sterile. They're old. The events happened many  
 9 years ago. The events may have happened many years ago  
 10 but the trauma and the pain has not only endured, it's  
 11 increased, and in many instances the perpetrators are  
 12 still around.

13 In the case of the churches, especially the  
 14 Catholic Church, there are ample records available. The  
 15 Catholic Church has the most extensive, detailed and  
 16 effective record-keeping system of probably any  
 17 organization on the face of the earth. And what they're  
 18 fighting so hard to do in case after case is prevent the  
 19 disclosure through discovery of these records. That's  
 20 what the bankruptcies are about. It's not protecting  
 21 the money. There is plenty of money. The Diocese of  
 22 Los -- of San Diego is presently appealing for  
 23 bankruptcy protection. This is the most land-rich  
 24 Diocese in the United States, but it's about protecting

1 of adult victims are not so much unwilling, they are not  
 2 unwilling to come forward, they are incapable of coming  
 3 forward until they feel around them the support and the  
 4 care and the understanding and the belief. I, myself,  
 5 in my 20 some years in dealing with victims have met,  
 6 counseled with and cried with a number who we would  
 7 consider to be senior citizens, the oldest of which is a  
 8 92-year-old woman who only came forward at the age of 89  
 9 when she finally felt she would be believed and  
 10 supported. I have met and listened to the  
 11 heart-wrenching stories of men and women in their 70s,  
 12 late 60s and 70s, and all have said we had this terrible  
 13 burden we have carried for our entire lives, we felt we  
 14 could never bring it forward because no one would  
 15 believe us and what good would it do? There was nothing  
 16 there for us. And I can tell you from my experience  
 17 that in many, many instances the attorneys who have  
 18 represented victims, young and old, have done for them  
 19 what the clergymen should have done. They have offered  
 20 support, a shoulder to cry on, belief that this  
 21 happened, support that you can continue on with your  
 22 life. And in many, many of these instances the  
 23 attorneys have gone far and above their legal duties and  
 24 provided this friendship and this support that many were

1 the secrets. Professor Hamilton said it and I will  
 2 reaffirm what she said, it's about protecting the  
 3 secrets, protecting further revelations of a culture,  
 4 culture that allowed abuse to happen rampantly, where  
 5 the institution was protected at the expense of the most  
 6 vulnerable.

7 Let me wrap up by speaking directly to some  
 8 of the objections. I have already mentioned the fact  
 9 that some objected the cases are too old to defend.  
 10 Well, that's the court's job. That's what the courts  
 11 are for. They will defend them.

12 Opening the window will allow victims to  
 13 come forward, and as Professor Hamilton has said, and I  
 14 have seen this in my experience and in fact, it will  
 15 track down and tag a number of perpetrators who are  
 16 still on the loose. If you want to see something that  
 17 will shock you, get your hands on the movie "Deliver Us  
 18 From Evil" which was a runner-up for an Academy Award.  
 19 Look at the interviews with Father Oliver O'Grady, a  
 20 defrocked priest who after getting out of 12 years in  
 21 prison was deported to Ireland. He's still loose. Just  
 22 recently his neighbors in Dublin called in an address  
 23 and said why is this man still on the street? We have  
 24 young children here. Watch in this movie actual footage

5 (Pages 14 to 17)

Page 18

1 of this man hanging around parks and playgrounds. The  
 2 average pedophile has 75 to 80 victims and he doesn't  
 3 lose his steam until he's in his late 80s or maybe in  
 4 his coffin.

5 There will be a deluge of false claims.  
 6 This is patently untrue. I have been involved in this  
 7 longer than probably anyone. I have probably been  
 8 directly involved in more cases in the civil courts,  
 9 both criminal and civil, than anyone else, including the  
 10 attorneys. I know of two false claims in the State of  
 11 California that resulted from the opening of the window  
 12 there and in my experience I can count six out of  
 13 probably several thousands. These were unscrupulous  
 14 sociopathic people that tried to jump on the band wagon  
 15 and make some monetary gain from the unfortunate --  
 16 misfortune of others. But I can also attest to the fact  
 17 that the attorneys that I know put their potential  
 18 clients through such a rigorous screening that no one in  
 19 their right mind would want to get involved in one of  
 20 these litigation processes unless that process was going  
 21 to actually help heal harm that had been done to them.

22 Some have said that the deluge of false  
 23 claims will cause a severe curtailment at least of the  
 24 Catholic Church's good works such as parish and

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1 geographic solution. He didn't work out in this place,  
 2 we'll send him over there. Slap him on the wrist,  
 3 problem is taken care of. But it has not worked and it  
 4 all came back to haunt at least my denomination and  
 5 using that as a catalyst other denominations beginning  
 6 in 1984.

7 The church leadership of many churches have  
 8 said we have learned so much, we didn't understand then  
 9 how serious child sexual abuse was. No normal, sane  
 10 adult human being can claim that they didn't understand  
 11 that sex between an adult and a child is not harmful.  
 12 But what the churches didn't understand then and what  
 13 they understand now is that they can no longer get away  
 14 with it.

15 These claims will certainly not drive any  
 16 church into bankruptcy. The five Dioceses in the United  
 17 States that have filed for bankruptcy protection have  
 18 not gone into bankruptcy. They have filed for  
 19 protection to forestall and to curtail the trial  
 20 processes that Marci Hamilton mentioned have been  
 21 stopped because of the fear of disclosure of the  
 22 secrets.

23 And I think perhaps the most bizarre of the  
 24 oppositions or the objections has been the fact that

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1 charitable ministries and that these Dioceses will end  
 2 up in bankruptcy, one can say the same for the other  
 3 churches or some private institutions. Speaking for the  
 4 Catholic Church, most of its actual charitable work  
 5 happens through an organization called Catholic  
 6 Charities and between 80 and 92 percent of all of the  
 7 funding throughout the country from Catholic Charities  
 8 comes from federal and state financial aid. A tiny  
 9 percentage comes from the Dioceses itself. In no  
 10 Diocese in the United States or any other country has  
 11 any ministry, parish or school been forced to close or  
 12 curtail its activities because of the settlements or  
 13 court awards given to victims of childhood sexual abuse.

14 But if you look on the other end of the  
 15 spectrum, the awards given to the victims of childhood  
 16 sexual abuse, these are children and now men and women  
 17 in most cases who lives have been irreparably ruined not  
 18 only by perpetrating dysfunctional clerics but by the  
 19 neglect and the malevolent neglect of the church's  
 20 leadership. The policy in the Catholic Church and in  
 21 other denominations has not been to disclose  
 22 perpetrators to law enforcement authorities or child  
 23 welfare institutions. It has been to cover it up and to  
 24 transfer them from one place to another using the

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1 this is in the case of the Catholic Church Catholic  
 2 bashing. It's a conspiracy. It's persecution of the  
 3 church. Even on its face that is utterly ridiculous  
 4 because what this is about is a call to accountability  
 5 of an institution and of many institutions that hid  
 6 behind their institutional identity to prevent  
 7 accountability for its members and its leadership at the  
 8 expense of the most vulnerable and the most innocent.  
 9 If calling forth and publicly exposing wrongdoing,  
 10 criminal behavior and evil-doing by members of an  
 11 institution is bashing that institution, then the  
 12 institution needs to be bashed. That is not bashing or  
 13 prejudice. It's truth telling.

14 Is there an upside? I believe there is. I  
 15 believe that the legacy of civil suits, the grand jury  
 16 investigations and their devastating reports and the  
 17 attempts to make -- bring about legislative reforms in  
 18 this State and other states will prove to be a blessing  
 19 for churches and for private institutions alike because  
 20 it will continue to force them to reevaluate what their  
 21 meaning and mission is all about. The mission of no  
 22 church should be its own financial stability or the  
 23 creation of a series and a network of beautifully  
 24 trimmed physical plants. The mission of no church

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1 should be simply the sustenance of a controlling  
 2 governmental body, but it should be the compassionate  
 3 care and love to all of its members, especially those  
 4 most in need of it.

5 What has been happening in our country in  
 6 the past 20 some years has spread to other countries.  
 7 This is not an American problem. It's not an  
 8 English-speaking problem. It's not a Catholic problem.  
 9 It's a societal problem and it's been buried deeply  
 10 because we as a society and other societies are afraid  
 11 to confront the fact that we have devalued children and  
 12 the vulnerable so much that we have allowed them to  
 13 become abused and to remain wallowing in this abuse and  
 14 in this trauma for a lifetime. The institutions and the  
 15 churches need legislation to help remind them what they  
 16 are really about. You are helping to provide  
 17 accountability and honesty and a rebirth into what it  
 18 should be and not what it has been.

19 I'd like to thank you for the opportunity  
 20 to have been here today to speak with you on behalf of  
 21 the many thousands of victims that I have met,  
 22 especially the older ones, the men and the women whose  
 23 lives have been lonely, who have been trapped in trauma  
 24 and tragedy and pain and regret and suffering. The

1 SENATOR PETERSON: Mr. President, excuse  
 2 me, that question is probably better answered by  
 3 Mr. Clark and I'll ask him to respond to that. Father  
 4 Doyle is not an attorney and he's not familiar with  
 5 Delaware law.

6 FATHER THOMAS DOYLE: I'm not a civil --  
 7 I'm a church, a canon lawyer.

8 SENATOR STILL: He is a lawyer.

9 SENATOR PETERSON: A canon lawyer.

10 FATHER THOMAS DOYLE: A canon lawyer. It's  
 11 a different kind. I have specialized in medieval law.  
 12 Now, if you're interested in talking about graphic  
 13 regulations in 1412 I'm your man.

14 SENATOR STILL: No, I don't want to go back  
 15 that far, Father, but thank you. It's -- I had a couple  
 16 other questions if I could get to those. You talked  
 17 about the call to accountability and you have -- you're,  
 18 if I remember what you said correctly, most of what you  
 19 deal with are priests and that section of child abuse,  
 20 not into the familial relationships or family  
 21 relationships.

22 FATHER THOMAS DOYLE: I have dealt  
 23 primarily with clergy but because of the fact that I  
 24 have been involved with that I have also had to become

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1 legislative changes will offer some small opportunity  
 2 and hope to many of these to escape from this nightmare.  
 3 And it will also offer the impetus of fear to  
 4 perpetrators who are still running loose and to those  
 5 who would enable them, those institution leaders that  
 6 would enable them that as the gentleman said a few  
 7 minutes ago, we're sick of this, we're tired of it, we  
 8 will no longer allow our present and our future to be  
 9 ruined by this selfishness and greed. Thank you.

10 SENATOR ADAMS: Thank you, Father Doyle.  
 11 Senator Still.

12 SENATOR STILL: Thank you, Mr. President.  
 13 Father Doyle, thank you for your clear explanation and  
 14 opinion on the issue and your testimony. It is greatly  
 15 appreciated. The Bill provides for those very small  
 16 number of falsified claims, as you have illuminated,  
 17 that only attorney fees are payable. In the event  
 18 someone has an ax to grind with someone else and does  
 19 falsely testify, it would seem to me that attorney fees,  
 20 outside of the statute, solely attorney fees (inaudible  
 21 to reporter) would be a very small amount of money to  
 22 recover; are there other provisions in the code where a  
 23 person could seek repair of their reputation in the  
 24 event of a false claim?

1 involved in some instances with incestuous situations  
 2 and I have -- I have some experience with clergy of a  
 3 number of denominations, institutional abuse and  
 4 incestuous abuse.

5 SENATOR STILL: In your opinion, you have  
 6 five Master's degrees and a law degree, irrespective of  
 7 what section of time you're talking about.

8 FATHER THOMAS DOYLE: Yeah, well, I still  
 9 got to pay for the bus, you know.

10 SENATOR STILL: Your opinion of the  
 11 legislation that its time has come because the  
 12 institution has not dealt effectively with this issue.

13 FATHER THOMAS DOYLE: In my own opinion, my  
 14 personal area of expertise, it's not just the private  
 15 institutions or the churches but I think society in  
 16 general has not come to grips with the -- the incidence  
 17 -- in most instances of incestuous sexual abuse the main  
 18 enabler is the other spouse, the wife or the husband.

19 SENATOR STILL: Right.

20 FATHER THOMAS DOYLE: And oftentimes the  
 21 police are loathe to get involved because of perhaps the  
 22 reputation of the offending party - the stories are  
 23 legion - but it's a very embarrassing and a very  
 24 debilitating situation to get in and we don't want to

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1 deal with it.

2 SENATOR STILL: I asked this question of  
 3 Professor Hamilton, I'll ask you the same question. The  
 4 Tort Reform Association has recommended in their letter  
 5 that we consider a six or 12-year look-back period.  
 6 Your opinion of that would be what, if we're going to  
 7 look-back, why don't we just look-back all the way?  
 8 Why --

9 FATHER THOMAS DOYLE: I'm not quite I -- I  
 10 didn't see the letter, so I'm not quite sure I  
 11 understand -- I didn't understand what it meant when you  
 12 mentioned it with Professor Hamilton. Does that mean  
 13 you can only look back 12 or six years?

14 SENATOR STILL: Right.

15 FATHER THOMAS DOYLE: I think that's  
 16 ridiculous. I think it has to go all the way because  
 17 the fact is that most adult victims wait 30 years, the  
 18 majority wait at least 30 years to come forward.

19 SENATOR STILL: Okay. That's fair. I  
 20 really don't have any other questions. You have  
 21 explained your position pretty clearly and I appreciate  
 22 that.

23 FATHER THOMAS DOYLE: Thank you very much,  
 24 sir.

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1 SENATOR ADAMS: Thank you, Senator Still.  
 2 Senator Simpson.

3 SENATOR SIMPSON: Thank you, Mr. President.  
 4 Father Doyle, it was a very moving, emotional experience  
 5 for me to hear your testimony. I don't know how to get  
 6 my hands around this whole issue but it is pervasive in  
 7 society. You know you know the extent of the problem  
 8 probably better than anyone probably in this room,  
 9 especially the extent of the problem in the Catholic  
 10 Church. What worries me a bit is if we and every other  
 11 state pass similar legislation, that we're going to  
 12 potentially destroy the Catholic Church. Could you talk  
 13 about that? You know the extent of the problem. And if  
 14 we and other states pass this legislation does it have  
 15 the potential to destroy the Catholic Church?

16 FATHER THOMAS DOYLE: It does not have the  
 17 potential of destroying the Catholic Church. If  
 18 anything, it has the potential of building it up.  
 19 Building it up so -- so that the Catholic Church  
 20 realizes --

21 SENATOR DeLUCA: Mr. President.

22 SENATOR ADAMS: Excuse me. Senator DeLuca.  
 23 SENATOR DeLUCA: With all due respect, I  
 24 have nothing but empathy and respect for the people that

1 are here testifying today. I would respectfully request  
 2 that you show the same respect to our chamber and abide  
 3 by our rules, no matter how difficult it is, we ask that  
 4 you not demonstrate for or against any issue. We are  
 5 charged with the responsibility here, which we take very  
 6 seriously, of considering legislation and of paying  
 7 respect to our witnesses, and our witnesses today have  
 8 been very respectful of us and I appreciate that. It is  
 9 very hard to stand up here under some of this emotional  
 10 testimony, but before the Lieutenant Governor has to  
 11 rule somebody in a manner we don't want to hear it I  
 12 would just suggest that our guests here today abide by  
 13 our rules and refrain from any further outburst.

14 SENATOR ADAMS: Thank you, Senator DeLuca.  
 15 And I would reinforce that sentiment and ask all those  
 16 visitors in the chamber please to respect our procedures  
 17 and not either cheer or jeer when testimony is given.  
 18 Thank you for that respect.

19 FATHER THOMAS DOYLE: I would like to  
 20 apologize for becoming perhaps a bit too emotional in my  
 21 testimony and I want to say why, though, because I have  
 22 known and have known for 20 some years intimately the  
 23 victims and their mothers and fathers, and I believe  
 24 that one of the problems in my own denomination, and one

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1 of the reasons for the lack of empathy and concern for  
 2 the victims, is that the men who are in charge of the  
 3 Catholic Church have no idea what parenthood is all  
 4 about or what intimacy is all about or what loving a  
 5 child is all about.

6 To answer your question I -- let me just  
 7 hold up something. The opposition to this legislation  
 8 from the Catholic Church in particular and the strongest  
 9 and most vociferous opposition in every state that I  
 10 have been involved in to any legislative change has come  
 11 from the Roman Catholic Church, and the Catholic Church  
 12 has been singled out by society, by the lawmakers, by a  
 13 number of other institutions in this regard is because  
 14 it has been the most egregious offender, not just  
 15 because it's the Catholic Church, not because people are  
 16 anti Catholic or anti religious. It's because we have a  
 17 track record that is horrendous.

18 When I came in I was given a full-page  
 19 advertisement to read by Senator Peterson. Many of you  
 20 probably saw this. It appeared in June 16th, 2006  
 21 edition of the News Journal. It's by an outfit called  
 22 the American Society For Tradition Family Property.  
 23 About the only statement on this page that I can  
 24 guarantee is true is the date. It's filled with half

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1 truths, untruths, erroneous spins and everything else,  
 2 all based on your question, sir, will this destroy the  
 3 Catholic Church. It will not. Absolutely not. There  
 4 is no evidence for this. There is no evidence of a  
 5 flood of false cases, of bankruptcies, of churches going  
 6 out of business. Nothing whatsoever. What it will do  
 7 is cause the churches to remember what they are really  
 8 supposed to be about.

9 SENATOR ADAMS: Senator Simpson.

10 SENATOR SIMPSON: This question relates to  
 11 church law and as a Catholic. If a priest hears  
 12 confession, someone that is abusing their child or any  
 13 child, are they -- what does church law say about them  
 14 turning that person in to --

15 FATHER THOMAS DOYLE: I understand the  
 16 question very well. It's something that comes up quite  
 17 often. The issue is can a priest hearing confession  
 18 disclose to anyone if a person confesses to him that he  
 19 has sexually abused a child and the answer is this:  
 20 Under no circumstances can a priest hearing confession  
 21 disclose to anyone the identity of anyone who has gone  
 22 to confession to him or what he has heard. The best he  
 23 can do would be to urge the person to seek assistance,  
 24 to seek help or to turn himself in.

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1 SENATOR ADAMS: Senator Simpson.

2 SENATOR SIMPSON: Doesn't that sort of put  
 3 us in a Catch 22 then because then they are condoning,  
 4 if you will, sexual abuse and doesn't that give them a  
 5 degree of negligence that they can later be sued for by  
 6 the victim?

7 FATHER THOMAS DOYLE: It does quite  
 8 possibly give them, it's never happened that I have  
 9 known of. In fact, in my years of experience the only  
 10 time I have known where there has been a connection  
 11 between sexual abuse and confession is when priests have  
 12 used confession to begin to groom and to get access to  
 13 their victims, but I know of no instances where a person  
 14 has said I confess this to a priest, I confess that I  
 15 was an abuser or had that happened to me and I'm going  
 16 to sue because of this. It's a very -- it's almost a  
 17 non problem, sir, to be honest with you. And the best a  
 18 confessor can do, and, quite frankly, I have heard  
 19 confessions where it's been brought up to me, is to urge  
 20 the person to seek help but that is one area where  
 21 privileged communication is almost total.

22 SENATOR SIMPSON: What does the courts say  
 23 about that?

24 FATHER THOMAS DOYLE: The courts in a

1 couple of states, several states, I'm not sure of the  
 2 courts but I know in several states the clergy penitent  
 3 privilege has been waived with regard to reporting child  
 4 sexual abuse or child abuse. In other words, you can't  
 5 claim clergy penitent privilege. But I know of no state  
 6 - and I have tried to follow this fairly closely - where  
 7 there has actually been a cause brought on that regard,  
 8 where there has actually been a case alleging that a  
 9 priest should have reported but did not. I believe,  
 10 first off, you know, not too many people go to  
 11 confession any more anyway, but I mean that's a whole  
 12 other issue.

13 SENATOR ADAMS: Senator Simpson. Senator  
 14 McDowell.

15 SENATOR McDOWELL: Thank you, Father Doyle.  
 16 Father Doyle, I want to thank you for your testimony  
 17 today and certainly just a couple things. First of all,  
 18 I want to say I think that maybe your testimony was all  
 19 well thought out and intended but I think there is maybe  
 20 something you just recently said that is perhaps not  
 21 intended. You said that - and I think maybe due to your  
 22 -- your deep feeling for the subject which is certainly  
 23 appreciated - but you said that priests are not able to  
 24 relate to some of these issues because they don't know

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1 one of the reasons that the institutional leadership in  
 2 the Catholic Church has not been able to be as  
 3 compassionately understanding or at least comprehensive  
 4 of the depth of this problem is because they are not  
 5 parents, and I'm not a parent, and I will admit that I'm  
 6 not as -- as compassionately understanding. I don't get  
 7 the full picture. I have been with parents. I have  
 8 been with victims. And there is something in the mix  
 9 that happens between a parent and a child that you would  
 10 have an especially poignant pain when one of your  
 11 children is abused or hurt that I would never  
 12 understand. That's all I'm trying to say. It doesn't  
 13 mean that Bishops and priests and ministers and rabbis  
 14 are not compassionate and understanding and sympathetic.  
 15 They are. They are.

16 SENATOR McDOWELL: Thank you. Thank you,  
 17 Father. One of the other things I wanted to ask about,  
 18 it was a little confusing and it may be that I had lost  
 19 full concentration at that point in time, I had a  
 20 document that I had to sign placed here, but it seemed  
 21 to me I heard you say that in terms of discovering false  
 22 claims I think was the area that was being discussed you  
 23 said that the courts would -- would defend --  
 24 FATHER THOMAS DOYLE: I'm sorry, sir?

1 SENATOR McDOWELL: I thought I heard you  
 2 say the courts would defend those who are falsely -- may  
 3 be falsely accused.

4 FATHER THOMAS DOYLE: No, not at all. No.

5 SENATOR McDOWELL: Okay. Then I did --  
 6 FATHER THOMAS DOYLE: All I meant is that I  
 7 think the courts would be able to dispense with the  
 8 false claims, to determine the false claims.

9 SENATOR McDOWELL: Okay. And there is a  
 10 difference there --

11 FATHER THOMAS DOYLE: Oh, yeah. Certainly  
 12 not defend them. I have no use for people who take  
 13 advantage and hurt the many authentic victims who want  
 14 to do it for their own self aggrandizement making false  
 15 claims.

16 SENATOR McDOWELL: Okay. Because I do  
 17 think we have an adversarial system and the court is  
 18 basically a neutral between two competing adversaries  
 19 whatever the issue brought initially to the court.

20 FATHER THOMAS DOYLE: I agree. No, I  
 21 perhaps didn't phrase it as clearly as I wanted to, but  
 22 I was trying to say, you know, that the courts  
 23 themselves, if the lawyers don't weed them out  
 24 beforehand, which it's been my experience that they do,

1 when you get an unscrupulous lawyer and an even more  
 2 unscrupulous client you're in for a problem and  
 3 hopefully that's where the courts will step in and say  
 4 that's enough, you're wasting our time and you're  
 5 wasting our money.

6 SENATOR McDOWELL: Thank you. And I would  
 7 hope that would be the case also. But I do -- lastly, I  
 8 want to thank you for a refreshing point of view that we  
 9 don't usually hear because you said you're an attorney  
 10 that -- you're a lawyer that specializes in canon law  
 11 and therefore you don't really know about some of the  
 12 issues of law and that's quite refreshing here on this  
 13 floor because most of the lawyers who come before us  
 14 claim that they're experts in absolutely everything, so  
 15 I thank you for your candor.

16 FATHER THOMAS DOYLE: Thank you.

17 SENATOR ADAMS: Thank you, Senator  
 18 McDowell. Senator DeLuca.

19 SENATOR DeLUCA: Thank you, Mr. President.  
 20 Father, thank you for your testimony today. I wanted to  
 21 give you an opportunity to comment on and follow up on  
 22 some of Senator Simpson's questions because he asked you  
 23 about confession and I thoroughly understand your answer  
 24 about the confidentiality of confession, but that

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1 privileged communication, with the First Amendment  
 2 protections of the rights of Bishops and priests and  
 3 rabbis to conduct religious affairs in their own  
 4 denominations. What this is is an intentional enabling  
 5 of criminal behavior which in itself is criminal.

6 SENATOR ADAMS: Senator Copeland.

7 SENATOR COPELAND: Thank you,  
 8 Mr. President. I just wanted to try to get my own  
 9 understanding of sort of the dynamics here. You said  
 10 that -- that a pedophile has on average 75 to 80  
 11 victims. Now, I'm assuming that would not be the case  
 12 for an incestuous relationship or is that man, because I  
 13 think most of the time it probably is, you know, sort of  
 14 doing the whole neighborhood sort of thing. I mean I'm  
 15 trying to understand. I can see in a priest situation  
 16 where there is almost a continuous flow that you would  
 17 have repeat victims over and over and over. Could you  
 18 talk about that just a little bit?

19 FATHER THOMAS DOYLE: Sure. First off, I'm  
 20 not a clinical psychologist, as you know. I'm an  
 21 addiction therapist. But what I meant, and the  
 22 statement is this, and I believe there is a clinical  
 23 psychologist who is going to follow me. First, let me  
 24 make a distinction between a pedophile, that's a man and

1 maybe five. I can't speak authoritatively with regard  
 2 to incest because I'm not up to speed on it.

3 SENATOR COPELAND: All right. I appreciate  
 4 the answer and I guess part of the reason is, you know,  
 5 just sort of looking at the numbers, I mean Delaware is  
 6 a small State. We have got 800,000 some residents and  
 7 if half of those are below the age of 18 and one in five  
 8 is being sexually assaulted, that gives you about 80,000  
 9 kids and if it's 80 per, that's a thousand perpetrators.

10 FATHER THOMAS DOYLE: That's right.

11 SENATOR COPELAND: I'm a numbers guy and  
 12 everybody sort of knows that here. I mean that just to  
 13 me is a stunning number, but if it's only five, that  
 14 number could be 10,000 people.

15 FATHER THOMAS DOYLE: True. It's shocking  
 16 and it's something that I still with all my experience I  
 17 still can't wrap my mind around the numbers and the  
 18 reality that I witnessed first hand. 24 years ago when  
 19 I first got involved no one thought there would be this  
 20 vast number out there and then as we kept digging more  
 21 and more victims would come forward and it's still going  
 22 on in the churches. I know for a fact it's still going  
 23 on. Perpetrators are still being covered in the  
 24 Catholic Church and known offenders are still being

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1 rarely a woman, who receives sexual gratification from  
 2 prepubescent children, boys or girls before they hit  
 3 puberty. A small minority of the actual clergy  
 4 perpetrators are true pedophiles. The majority are what  
 5 are called ephebophiles which are men or women who  
 6 receive sexual gratification or excitement from becoming  
 7 sexually involved with young adolescent children. A  
 8 pedophile is a highly, highly compulsive disorder.  
 9 These are the men who generally will have multiple  
 10 victims, 75 to 80 victims. That's the numbers I have  
 11 read in the professional journals. The ephebophiles  
 12 oftentimes will be less, less than the numbers, although  
 13 some who are highly compulsive and fixated will have  
 14 vast numbers but those numbers are significantly less.

15 I don't know the statistics for incest, how  
 16 many incestuous relationships are truly pedophilic and  
 17 how many involve young adolescents. In the case of  
 18 clergy, most of the victims have been young adolescents.  
 19 The highest number of victims that I have known of was  
 20 one priest who admitted to at least 500, possibly 550.  
 21 I have dealt with a number of cases over the years where  
 22 the victims have said from 75 to 150 and occasionally  
 23 there are a small number. If the man says there was  
 24 only one, inevitably that means there were maybe ten or

1 shuffled around. That's a fact.

2 SENATOR COPELAND: Thank you.

3 FATHER THOMAS DOYLE: Thank you.

4 SENATOR ADAMS: Thank you, Senator  
 5 Copeland. Senator Peterson.

6 SENATOR PETERSON: Yes. Thank you,  
 7 Mr. President. If there are no other questions, I ask  
 8 that the witness be excused.

9 SENATOR ADAMS: The witness may be excused.  
 10 Thank you, Father.

11 SENATOR PETERSON: And Mr. President, I  
 12 know that Father Doyle is a speaker tonight at the  
 13 University of Delaware and has to leave and hopefully  
 14 all of the questions have been asked of him. Professor  
 15 Hamilton is still in the building and will be back.

16 I have one more witness. I appreciate your  
 17 attention and your patience, and I would at this time  
 18 like to request personal privilege of the floor for  
 19 Dr. Carol Tavani.

20 SENATOR ADAMS: Privilege of the floor has  
 21 been requested for Dr. Carol Tavani. Seeing no  
 22 objection please come forward. Please restate your name  
 23 for the record and who you represent. You'll have to  
 24 pull that -- there you go.

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1 DR. CAROL TAVANI: I am Dr. Carol Tavani.  
 2 I am a board certified neuropsychologist and I was asked  
 3 to testify today.

4 SENATOR ADAMS: Thank you, Dr. Tavani.  
 5 Senator Peterson.

6 SENATOR PETERSON: Yes. Thank you,  
 7 Mr. President. Dr. Tavani, welcome to the Delaware  
 8 State Senate and thank you for your patience.

9 DR. CAROL TAVANI: You're very welcome.

10 SENATOR PETERSON: Would you please add to  
 11 the testimony that you have heard what you know about  
 12 the victims and in particular the long-term effects of  
 13 child sexual abuse.

14 DR. CAROL TAVANI: Okay. Maybe can I just  
 15 frame it by telling them what I do for a living?

16 SENATOR PETERSON: Yes, please.

17 DR. CAROL TAVANI: I am a board certified  
 18 neuropsychiatrist. I have been here in Delaware over 20  
 19 years. I founded the psychiatric consultation service  
 20 at Christiana Hospital where I subsequently became  
 21 president of the staff, first woman for that, and I have  
 22 been also the first woman president of the State Medical  
 23 Society, have represented it at the AMA and now  
 24 represent Christiana there.

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1 Really at heart I am a clinical  
 2 in-the-trenches doctor. It's a fairly frequent  
 3 occurrence on rounds at Christiana in the med-surg beds  
 4 that I talk to somebody who has an unexplained syndrome,  
 5 abdominal pain, pelvic pain, a funny rash someplace  
 6 where nobody can figure out what's causing it. The mind  
 7 and the body are intimately related. Those sorts of  
 8 complaints raise a real red flag to me. The other huge  
 9 red flag is when I'm trying to get a history from  
 10 somebody and they say to me I don't remember anything  
 11 before the age of eight or whatever age. That's  
 12 abnormal and there is a reason for that. And darned if  
 13 it doesn't turn out to be that that person is a victim  
 14 of abuse. And we have some demographics that Senator  
 15 Peterson shared with you, but what I can tell you is if  
 16 I see it every day and I do some 2,000 consults a year  
 17 in that base, it can't be rare. It's -- it's prevalent.

18 I was asked by Senator Peterson to be the  
 19 one to do the wrap-up today and I'll try to be brief and  
 20 the hour is late and I don't know what time you break  
 21 for dinner here but I'll try to facilitate that. You  
 22 heard, and I want to just recap what you heard today and  
 23 then I have a couple brief points I want to make myself.  
 24 He devastated my life. He took my childhood. It

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1 burdens the soul and breaks the spirit, and these are  
 2 first-hand accounts of the very brave men and women who  
 3 came to talk to you today and might I remind you that  
 4 those are the healthier ones you heard.

5 I for three and a half years spent about  
 6 ten or 15 hours a week going over to the prisons trying  
 7 sort of single-handedly to make things better over there  
 8 and I will tell you that over at BWCI at the women's  
 9 prison I would go whole days when I never talked to one  
 10 person in there, one woman, who had not been abused. It  
 11 was so prevalent. Obviously something happens to these  
 12 people to result in such a downward drift in their lives  
 13 that they wind up incarcerated. You heard today shame,  
 14 guilt, fear, suicide attempts, permanent disability of a  
 15 highly functional individual, an attorney in a highly  
 16 prestigious position, this was somebody obviously with  
 17 very strong premorbid coping mechanisms, and if it can  
 18 happen to somebody like that I submit it can happen to  
 19 any of us. This could have been you or I or, God  
 20 forbid, our children and maybe it has.

21 They can't trust anybody any more. They  
 22 can't establish a solid relationship. For some reason  
 23 that the psyche does to you they often will tend to  
 24 gravitate into abusive relationships, and if they do

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1 pick a good person it's awfully hard to live with  
 2 somebody who has all those issues and that you can't get  
 3 near or they recoil. I mean that's kind of hard to --  
 4 to live with. I -- I am occasionally asked to give a  
 5 forensic expert witness opinion. I have done that in  
 6 the civil courts in constitutional law cases,  
 7 particularly in a lot of criminal cases and also in  
 8 Chancery Court. I do a lot of profiling as well for  
 9 dangerousness.

10 The problem is very -- is very prevalent.  
 11 You get -- you start to put profiles together of what  
 12 these people have been through and what happens to them.  
 13 What you didn't hear, though, because they're not here  
 14 to tell you, are in all these incarcerated women who  
 15 have been abused is that they self medicate, often with  
 16 drugs. There is a tremendous prevalence of substance  
 17 abuse and addiction in people who have been abused. Now  
 18 only about a quarter of the people in this country who  
 19 need a good psychiatrist get to see one. It's kind of  
 20 unfortunate for a number of reasons, but they  
 21 self-medicate. They don't know what else to do and  
 22 they're not big on telling because of the aforementioned  
 23 shame and guilt and fear. So they do the best they can  
 24 with it which sometimes isn't very good themselves.

12 (Pages 42 to 45)

1 They -- there are -- there is a ripple  
 2 effect then of the drug abuse. They prostitute for drug  
 3 money because they get desperate. They get beat up in  
 4 the abusive relationships. They get all sorts of  
 5 horrible physical diseases like AIDS and Hepatitis C  
 6 related to those terrible risky behaviors and on and on  
 7 and on and there are lots of things you didn't hear  
 8 today because we only have one afternoon to hear about  
 9 it, but I just thought I wanted to add those -- those  
 10 things.

11 So you have heard the sequelae. What  
 12 happens to kids when they're being abused is - and the  
 13 younger they are the easier this happens - is that the  
 14 mind sort of goes on vacation. It -- what's happening  
 15 is too painful right then to endure and so the mind kind  
 16 of goes somewhere else while the body is enduring that  
 17 and that's called dissociation and what happens then is  
 18 that the mind of the victim gets very good at that.  
 19 Well, at the moment it might be adaptive but later in  
 20 life it's not adaptive and so they -- they develop  
 21 maladaptive behaviors.

22 One of the very criteria in post-traumatic  
 23 stress disorder in the DSM 4, that's the psychiatric  
 24 Bible of diagnoses, is the inability to remember

1 Another thing I wanted to mention about  
 2 what happens to these victims is we know so much more  
 3 now - and this is my area, is neuropsychiatry is the  
 4 brain and sort of the head bone is connected to the neck  
 5 bone - we know so much more now about the neurology of  
 6 the brain and trauma. Memory is not laid down the same  
 7 way because the adrenaline is pouring out and so memory  
 8 gets -- it's kind of squelched and the brain actually  
 9 gets re-hardwired and, in fact, some of the treatments  
 10 we have developed for say post-traumatic stress disorder  
 11 work at re-hardwiring the brain. It's an arduous  
 12 process. It's a daunting process to try to right that  
 13 if it ever can be righted. These people are scarred and  
 14 it's something they carry with them forever and ever.

15 As I mentioned, I did the Whitwell case  
 16 last week. I examined him and then testified in that  
 17 trial. The man can't say I love you to his wife. He  
 18 can't hold her hand. He can't buy her flowers because  
 19 the priest told him that all women are bad news and they  
 20 want you to buy them flowers and things like that. He  
 21 can't make a good relationship with the loveliest lady  
 22 and the most understanding lady and a psychiatric nurse  
 23 at that that you'd ever want to meet. He's so  
 24 frightened that this is going to happen to his children

1 important parts of a trauma. The mind protects us from  
 2 what's too painful to think about and it gets to a point  
 3 where you actually sort of forget it. And you can't  
 4 conjure it up and maybe it's not a good thing because  
 5 the mind kind of lets you see it when it's ready, and  
 6 oftentimes that's why fragments of things will come back  
 7 and then they start to come back and people get greatly  
 8 distressed when that happens. But there certainly is  
 9 such a thing as repression of memory and dissociative  
 10 amnesia and that sort of thing, and I'm giving you an  
 11 oversimplified explanation but it's a question that  
 12 always gets asked.

13 Are there people who would try to exploit  
 14 that? Yeah, sure there are people who will try to  
 15 exploit that. Probably not a lot as you have heard  
 16 before from some very prestigious speakers here, but  
 17 there will be some. That can be weeded out. And are  
 18 there instances where maybe a less than qualified  
 19 therapist will not ask questions in the right way and  
 20 will suggest something to somebody that they then come  
 21 to believe? Yes, and that's happened, but that can be  
 22 dealt with, too. That's not a reason not to go ahead  
 23 and right something that needs to be righted and do the  
 24 proper thing.

1 that he's going to quit his job as a Navy commander and  
 2 a Top Gun pilot so that he can stay home and watchdog  
 3 his kids as if you could do that 24/7. So these are the  
 4 kinds of things that happen to people.

5 You have heard that we are shielding the  
 6 perpetrators. By the way, I have also talked to  
 7 hundreds of perpetrators and probably thousands of  
 8 victims. They offend again. They target the helpless.  
 9 They pick out the weak ones, the sensitive ones.  
 10 They're very good at it. They prey on the helpless. We  
 11 can't let them do that. When I came to Delaware to  
 12 intern, I didn't know one person here. Delaware has  
 13 been very good to me. I love this state. This is home.  
 14 I'm very proud of Delaware. We're very progressive.  
 15 We're nimble enough and small enough to do things that  
 16 you couldn't get done elsewhere. I would like for us to  
 17 be able to continue to be proud of our stewardship of  
 18 this State, as hokey as that may sound, I'm kind of  
 19 speaking from the heart as well as a professional, so I  
 20 would ask you Senators to do the right thing and open  
 21 those courthouse doors. I thank you.

22 SENATOR ADAMS: Thank you, Dr. Tavani.  
 23 Senator Peterson.

24 SENATOR PETERSON: If there are no

<p style="text-align: right;">Page 50</p> <p>1 questions for Dr. Tavani.</p> <p>2 SENATOR ADAMS: Senator Cloutier.</p> <p>3 SENATOR CLOUTIER: Thank you. I'd like to</p> <p>4 be marked present, please.</p> <p>5 SENATOR ADAMS: You may.</p> <p>6 SENATOR PETERSON: I'd ask that the witness</p> <p>7 be excused. Oh, I'm sorry.</p> <p>8 SENATOR CLOUTIER: Yes. I would have a</p> <p>9 question. Thank you. Some families accept incest as</p> <p>10 natural and okay and they keep it all quiet as long as</p> <p>11 it's with a family member and I know this goes on with</p> <p>12 generation through generation. What is going on here?</p> <p>13 Okay.</p> <p>14 DR. CAROL TAVANI: That's true.</p> <p>15 SENATOR CLOUTIER: How far back, I have</p> <p>16 three questions and they may not be in the right order.</p> <p>17 But first of all, this wrong that we're addressing, it</p> <p>18 is -- it is just the worst thing that families can go</p> <p>19 through and I'm glad that there are so many sponsors are</p> <p>20 on the Bill because it is reprehensible.</p> <p>21 The questions that I have are how far back</p> <p>22 can a child who hasn't been molested remember and then</p> <p>23 possibly the child that has, you mentioned eight years</p> <p>24 old?</p>	<p style="text-align: right;">Page 52</p> <p>1 dealt with. I don't think there are good statistics</p> <p>2 really because most of it's unidentified as we heard</p> <p>3 before about exactly how many will become perpetrators.</p> <p>4 But I can tell you that I have certainly talked to</p> <p>5 people who have been offenders, sexual and otherwise,</p> <p>6 and when you really probe and if they remember</p> <p>7 oftentimes the same thing was done to them.</p> <p>8 SENATOR CLOUTIER: Can we in the General</p> <p>9 Assembly pass any legislation that may help stop it at a</p> <p>10 young age instead of waiting until they are -- become</p> <p>11 abusers? Is there something that we can do so that we</p> <p>12 can add to this Bill and I don't believe we can do that.</p> <p>13 We're not doing any amendments.</p> <p>14 DR. CAROL TAVANI: In terms of legislation</p> <p>15 I think what you would do by passing this Bill is to</p> <p>16 identify many more perpetrators than would be identified</p> <p>17 and to protect from here forward many, many thousands</p> <p>18 more children in Delaware. So there would be certainly</p> <p>19 a secondary prevention going on. In terms of primary</p> <p>20 prevention, I think the answer to that, in other words,</p> <p>21 stopping it before it starts, would be education. And I</p> <p>22 think we have taken some measures in our schools to say</p> <p>23 to children this is okay touching, this is not okay</p> <p>24 touching, that sort of thing. I think those efforts</p>
<p style="text-align: right;">Page 51</p> <p>1 DR. CAROL TAVANI: How far back can a child</p> <p>2 remember who hasn't been molested?</p> <p>3 SENATOR CLOUTIER: Because you're talking</p> <p>4 about how an eight year old can't remember.</p> <p>5 DR. CAROL TAVANI: In normal development</p> <p>6 many children will remember back to two or in some cases</p> <p>7 earlier, but about two.</p> <p>8 SENATOR CLOUTIER: Okay. So the child that</p> <p>9 was molested since the child was two and has been maybe</p> <p>10 diagnosed with a detachment disorder or disassociation,</p> <p>11 will that -- what are the chances that that child would</p> <p>12 become a molester or perpetrator?</p> <p>13 DR. CAROL TAVANI: I don't think I can give</p> <p>14 you any odds. It depends on an awful lot of things. It</p> <p>15 depends on if that person gets treatment early on the</p> <p>16 prognosis would be better. It depends on both nature</p> <p>17 and nurture. It depends on other aspects of their</p> <p>18 upbringing. If there were a lot of good things about</p> <p>19 their upbringing, too, that person may have developed</p> <p>20 better coping mechanisms.</p> <p>21 Unfortunately, however, this conspiracy of</p> <p>22 silence happens and you learn what you live and so if --</p> <p>23 if it's a family who keeps secrets, the classic</p> <p>24 dysfunctional family, then -- then it's not going to get</p>	<p style="text-align: right;">Page 53</p> <p>1 have happened as the problem of childhood sexual abuse</p> <p>2 has become more prevalent and that would be the best</p> <p>3 answer I can give you.</p> <p>4 SENATOR CLOUTIER: Well, I do commend your</p> <p>5 work and I appreciate the answers.</p> <p>6 DR. CAROL TAVANI: Thank you. Thank you.</p> <p>7 SENATOR ADAMS: Thank you, Senator</p> <p>8 Cloutier. Senator Peterson.</p> <p>9 SENATOR PETERSON: Yes, Mr. President. I</p> <p>10 ask that the witness be excused.</p> <p>11 SENATOR ADAMS: The witness may be excused.</p> <p>12 Thank you, Dr. Tavani. Senator Peterson.</p> <p>13 SENATOR PETERSON: Mr. President, that</p> <p>14 concludes my list of witnesses and before I request</p> <p>15 personal privilege of the floor for our attorney to</p> <p>16 respond to Senator Simpson and Senator Still's questions</p> <p>17 I would ask that staff distribute the list of</p> <p>18 organizations who have joined this coalition in support</p> <p>19 of the Bill along with comments that have been posted on</p> <p>20 the coalition's website.</p> <p>21 SENATOR ADAMS: Thank you, Senator</p> <p>22 Peterson. Ask staff to please distribute the list and</p> <p>23 the comments. Thank you very much. Senator Peterson.</p> <p>24 Senator Peterson, and I assume that you want those</p>

14 (Pages 50 to 53)

<p style="text-align: center;">Page 54</p> <p>1 entered into the record as well?</p> <p>2 SENATOR PETERSON: Yes.</p> <p>3 SENATOR ADAMS: They will be entered into</p> <p>4 the record.</p> <p>5 SENATOR PETERSON: Mr. President, I would</p> <p>6 request personal privilege of the floor for Mr. Jeff</p> <p>7 Clark.</p> <p>8 SENATOR ADAMS: Privilege of the floor has</p> <p>9 been requested for Mr. Jeffrey Clark. Seeing no</p> <p>10 objection, please come forward.</p> <p>11 Please restate your name for the record.</p> <p>12 MR. JEFF CLARK: Jeff Clark, Senate</p> <p>13 attorney.</p> <p>14 SENATOR ADAMS: Thank you, Mr. Clark.</p> <p>15 Senator Peterson.</p> <p>16 SENATOR PETERSON: Mr. President, I would</p> <p>17 yield to Senator Still or Senator Simpson. They both</p> <p>18 had questions. I don't --</p> <p>19 SENATOR ADAMS: Senator Still.</p> <p>20 SENATOR STILL: Thank you, Mr. President.</p> <p>21 Jeff, it's been a long time. I haven't seen you on the</p> <p>22 floor yet today. Welcome.</p> <p>23 MR. JEFF CLARK: Yes, sir.</p> <p>24 SENATOR STILL: A couple bills, a couple</p>	<p style="text-align: center;">Page 56</p> <p>1 misdemeanor and felony.</p> <p>2 SENATOR STILL: Can you put on the record</p> <p>3 what those would be for each one?</p> <p>4 MR. JEFF CLARK: Yes, sir.</p> <p>5 SENATOR STILL: Can you speak directly into</p> <p>6 the mic?</p> <p>7 MR. JEFF CLARK: Yes, sir. Sexual</p> <p>8 harassment is an unclassified misdemeanor. Indecent</p> <p>9 exposure in the second degree is a misdemeanor.</p> <p>10 Indecent exposure in the first degree is a misdemeanor.</p> <p>11 Incest is a misdemeanor. Unlawful sexual contact in the</p> <p>12 third degree is a misdemeanor. Unlawful sexual contact</p> <p>13 in both the second degree and the first degree are both</p> <p>14 felonies. Rape, all four degrees are felonies, and also</p> <p>15 sexual extortion is a Class A felony. Bestiality -- I</p> <p>16 don't believe bestiality would be included but that's a</p> <p>17 felony. Continuous sexual abuse of a child is also a</p> <p>18 felony. And that's the extent of the law.</p> <p>19 SENATOR STILL: Thank you, sir. So what we</p> <p>20 would be doing is taking those specific offenses and</p> <p>21 then under this Bill and enabling a civil remedy?</p> <p>22 MR. JEFF CLARK: That's correct, Senator.</p> <p>23 SENATOR STILL: Okay. Line eight: For a</p> <p>24 period of two years, why not three years? Why not one</p>
<p style="text-align: center;">Page 55</p> <p>1 questions on the Bill. Line three, a definition of a</p> <p>2 minor, a definition of an adult so we get that clear for</p> <p>3 the record.</p> <p>4 MR. JEFF CLARK: Sir, a minor is 18 or</p> <p>5 under, under 18. Adult is 18 or over.</p> <p>6 SENATOR STILL: So 18 is the magic number</p> <p>7 not 16?</p> <p>8 MR. JEFF CLARK: Yes, sir.</p> <p>9 SENATOR STILL: Is that different in any</p> <p>10 other section of the Code or is it always 18?</p> <p>11 MR. JEFF CLARK: It's -- to my knowledge</p> <p>12 it's always 18, Senator. I know in the Criminal Code it</p> <p>13 is 18 as well.</p> <p>14 SENATOR STILL: So there is consistency in</p> <p>15 the Code in that regard?</p> <p>16 MR. JEFF CLARK: Yes, sir.</p> <p>17 SENATOR STILL: Lines five through seven,</p> <p>18 talks about a civil cause for action and then it goes on</p> <p>19 to talk about what constitutes a criminal offense under</p> <p>20 the Delaware code. Would we classify this as a</p> <p>21 misdemeanor or a felony normally under the Criminal</p> <p>22 Code?</p> <p>23 MR. JEFF CLARK: Senator, the list of</p> <p>24 offenses that it's referring to would include both</p>	<p style="text-align: center;">Page 57</p> <p>1 year?</p> <p>2 MR. JEFF CLARK: That's a policy choice,</p> <p>3 Senator. I mean just as in any statute of limitations</p> <p>4 it's a decision by the General Assembly how long someone</p> <p>5 has to file a lawsuit. Current statute of limitations</p> <p>6 is two years from the date of injury. This would be a</p> <p>7 policy choice.</p> <p>8 SENATOR STILL: Okay. Is there a reason</p> <p>9 there is two years? Do we have it in other sections of</p> <p>10 the Code for a look-back period at all anywhere else?</p> <p>11 MR. JEFF CLARK: I'm not aware, Senator, of</p> <p>12 a look-back period in the Code anywhere other than</p> <p>13 for -- and there may be, I'm just not aware of any,</p> <p>14 although there was an Agent Orange provision I think was</p> <p>15 a six-month look-back provision was the only one with a</p> <p>16 cursory review that I found.</p> <p>17 SENATOR STILL: Okay. Line 12 it talks</p> <p>18 about different organizations, institutions, public or</p> <p>19 private, I'm assuming that means the State of Delaware</p> <p>20 employees would be covered under this as State employees</p> <p>21 in the public enterprise?</p> <p>22 MR. JEFF CLARK: Yes, sir, they would be.</p> <p>23 SENATOR STILL: So the sovereign immunity</p> <p>24 rule would not apply in these cases?</p>

15 (Pages 54 to 57)

1 MR. JEFF CLARK: Sir, it's my opinion that  
 2 as far as sovereign immunity is concerned this doesn't  
 3 add to that or take away from it. It is consistent with  
 4 it but the civil statute of limitations is a different  
 5 issue than sovereign immunity. They're essentially two  
 6 separate offenses to an action and this is not -- I  
 7 mean, it doesn't either add to that or take away from  
 8 that.

9 SENATOR STILL: Okay. Is the State limit  
 10 of liability under sovereign immunity still \$300,000?

11 MR. JEFF CLARK: Yes, sir, it is.

12 SENATOR STILL: So this doesn't change  
 13 that?

14 MR. JEFF CLARK: No, sir. It has no effect  
 15 on it.

16 SENATOR STILL: That would be the  
 17 limitation if there is a problem in our foster care  
 18 group and let's say we find somebody who is use the word  
 19 perpetrator in there and that's adjudicated under the  
 20 civil remedy here, the most that could be paid out, if  
 21 I'm correct, under a civil suit would be \$300,000?

22 MR. JEFF CLARK: That's my understanding,  
 23 Senator. I mean the one thing I can say with certainty  
 24 is that it doesn't change whatever the current law is

1 possibly there should be somebody else present in their  
 2 midst, I do a background check on the individual, I have  
 3 to do something that would represent to a court that I  
 4 took reasonable, prudent measures to assure myself that  
 5 this person was a safe person for my employees to be  
 6 around.

7 MR. JEFF CLARK: There -- I mean the court  
 8 would have to take -- make an analysis or make a  
 9 decision there under the circumstances of your case  
 10 whether there was an affirmative duty for you to take  
 11 such action. Of course, in an employment setting there  
 12 is a workers' comp exclusivity rule so no one could sue  
 13 you in the courts for such an action anyway.

14 SENATOR STILL: Okay. I think I got that  
 15 now. Line 15 deals with not simple negligence but gross  
 16 negligence. I assume that gross negligence is a higher  
 17 standard?

18 MR. JEFF CLARK: Yes, sir. Gross  
 19 negligence is defined by Delaware courts as being an  
 20 extreme departure from the ordinary standard of care.  
 21 Simple negligence is a simple departure from the  
 22 ordinary standard of care. An extreme departure is  
 23 gross negligence. Next up on the chain of the courts --  
 24 of the fact finder's tree of analysis, I guess you could

1 for any type of a tort action of that nature now.  
 2 SENATOR STILL: Thank you. Thank you.  
 3 Duty of care under number 12, now typically in the  
 4 investment field we have to follow the prudent man rule.  
 5 Is there a definition of duty of care? Is it a high  
 6 duty of care, an average duty of care, or any duty of  
 7 care? What's the standard here that we're considering?  
 8 That's line 12, last few words in that sentence.

9 MR. JEFF CLARK: Sir, I mean in this  
 10 context, I mean, it would be just the common, ordinary  
 11 meaning of duty of care. In a tort action for personal  
 12 injury of any nature, it's ultimately the court's  
 13 decision or a court's assessment of what the legal duty  
 14 is. It defines it based on common law and also  
 15 statutory provisions. And, I mean, I think it would --  
 16 it looked to what similar cases have decided with regard  
 17 to that.

18 SENATOR STILL: So if I hired a sales  
 19 Representative from my insurance agency I have a duty of  
 20 care to protect my employees, none of which  
 21 unfortunately in this case would be children because  
 22 they're not old enough to sell insurance, but let's for  
 23 this case, an example, say I could hire a child to clean  
 24 my office. I have a duty of care to make sure that

1 say, would be recklessness. So it's between negligence  
 2 and recklessness.

3 SENATOR STILL: Can you give me a clear,  
 4 concrete example I could put my arms around as a layman?

5 MR. JEFF CLARK: Sure. I mean gross -- an  
 6 extreme departure from the standard of care is difficult  
 7 to do that, sir, because the way -- the way it's done  
 8 with the finder of fact in a jury setting, for instance,  
 9 the judge, through jury instructions, will define what  
 10 the legal duty is, and if it's a case of simple  
 11 negligence it will tell the jury to determine based on  
 12 its common experience whether or not the defendant  
 13 breached that duty of care, did not follow it. In a  
 14 jury instruction that it would provide for gross  
 15 negligence it would be told to find liability only if  
 16 there is an extreme departure from that. Recklessness  
 17 is a conscious disregard of a known risk. It's a  
 18 different standard. Sir, I'm not trying to dodge your  
 19 question but any fact finder you have got -- may find --  
 20 may make a different decision with regard to any set of  
 21 facts.

22 SENATOR STILL: Thank you, Mr. Clark, and  
 23 for the record I wanted to make sure that some of these  
 24 things were on the record because I suspect that a judge

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1 may want to come back and get a copy of this and look  
 2 what we considered here. That's done in some extreme  
 3 cases and I think it's important that there is clarity.  
 4 And so I appreciate the patience of the sponsor on the  
 5 Bill.

6 Last question. Lines 17 through 19: A  
 7 verdict in favor of the accused shall not be the sole  
 8 basis for the determination that an accusation was  
 9 false. So if I read this in conjunction with line 16  
 10 through 17, it says that a person could recover their  
 11 attorneys fees where the court determines that a false  
 12 accusation was made with no basis in fact and with  
 13 malicious intent. So if it's -- if it's -- it's false  
 14 but not malicious there is no recovery of the attorney  
 15 fees. If the person suppressed their memory and they  
 16 thought they had this done but they really -- and there  
 17 is no maliciousness and they have proven wrong and they  
 18 lose, there is no attorneys fees to be paid?

19 MR. JEFF CLARK: That would be correct,  
 20 Senator.

21 SENATOR STILL: Okay. Now, it says the  
 22 court must make an independent finding of an improper  
 23 motive. What do you mean by improper motive here?

24 MR. JEFF CLARK: Sir, I mean, in reading

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1 subsection C an improper motive would be an accusation  
 2 made with no basis in fact and with malicious intent. I  
 3 mean, that's -- that's defined by the two terms above  
 4 it, I believe.

5 SENATOR STILL: Is that also defined  
 6 elsewhere in the code, improper motive, or is this --

7 MR. JEFF CLARK: It's a common, ordinary  
 8 meaning situation, Senator, but based on the context of  
 9 subsection C I believe it would be clear it would have  
 10 to be made with no basis in fact and with malicious  
 11 intent.

12 SENATOR STILL: Thank you, Mr. Clark. I  
 13 have no further questions.

14 SENATOR ADAMS: Thank you, Senator Still.  
 15 Other questions of the witness? Senator Peter --  
 16 Senator Copeland.

17 SENATOR COPELAND: Thank you,  
 18 Mr. President. I don't believe that Senator Still  
 19 covered it, and maybe he did and I just missed it or  
 20 didn't understand the answer, so I am going to ask -- I  
 21 have got one question I wanted to ask. In line 14 where  
 22 it says that damages against legal entities shall be  
 23 awarded under this subsection only if there is a finding  
 24 of gross negligence; does that phrasing mean that

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1 someone found that under subsection A gross negligence  
 2 is not the standard?

3 MR. JEFF CLARK: Sir, the qualification of  
 4 gross negligence for institutional liability applies  
 5 only to subsection B, the look-back provision.

6 SENATOR COPELAND: So there is no  
 7 institutional liability in subsection A?

8 MR. JEFF CLARK: No, Senator. There could  
 9 potentially be. It would be under a normal tort law  
 10 standard of negligence under subsection A, and that  
 11 would be from the point of the effective date of the  
 12 Bill going forward. During the look-back provision  
 13 there would be a heightened standard or a heightened  
 14 requirement of culpability, that being gross negligence  
 15 for an institution.

16 SENATOR COPELAND: Does that mean that the  
 17 State due to sovereign immunity is not subject to this  
 18 section in -- toward looking out since it's only a  
 19 negligent standard versus a gross negligent standard?

20 MR. JEFF CLARK: Sir, and perhaps I was --  
 21 painted too broad of a brush with that last statement.  
 22 This, both subsection A and subsection B, would not have  
 23 any impact regarding either taking away from or adding  
 24 to sovereign immunity in my opinion. I mean, they --

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1 the -- under subsection A looking forward you could  
 2 still sue the State if sovereign -- if qualified  
 3 sovereign immunity was waived under the circumstances.  
 4 But --

5 SENATOR COPELAND: How do you go about  
 6 waiving sovereign immunity? I mean, I just don't  
 7 understand it. That's --

8 MR. JEFF CLARK: Sir, the action has to be  
 9 taken either in bad faith, the actor has to be grossly  
 10 negligent, or it has to be taken not in the performance  
 11 of official duty, in exercising the discretion of  
 12 performing that official duty. And what -- I mean what  
 13 this -- if those circumstances -- one of those criterion  
 14 were not met, and sovereign immunity which has been  
 15 waived in a different section which isn't impacted by  
 16 this section, if one of those criteria that gives the  
 17 State its protection is not met under the circumstances  
 18 and the plaintiff, the person suing, can prove that one  
 19 of those criteria did not apply, then the  
 20 forward-looking provision here would apply to the State.

21 SENATOR COPELAND: So if I have identical  
 22 facts with a -- with a, you know, the -- an Episcopalian  
 23 Diocese and the State of Delaware in a, you know, child  
 24 care center or what have you, identical facts, if it --

17 (Pages 62 to 65)

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<p>1 if the court finds guilt by reason of just negligence,  2 the Episcopal Diocese is liable but State would not be?  3       MR. JEFF CLARK: Looking forward, yes, sir.  4 Not under the look-back.</p> <p>5       SENATOR COPELAND: Only if we reach the  6 level of gross negligence does the State ultimately gain  7 responsibility?</p> <p>8       MR. JEFF CLARK: That's correct, Senator.</p> <p>9       SENATOR COPELAND: So there are different  10 standards looking out whether it's the public or  11 private.</p> <p>12       MR. JEFF CLARK: Yes, sir, but just the  13 point I'd like to make is the different standards are  14 imposed already by the General Assembly in the State  15 Tort Claims Act. This really is just a different layer.  16 It's a different defense. It's a different statute that  17 lays out what the timing requirements are for a suit,  18 and, I mean, as now the General Assembly has spoken and  19 has said that you have two years to file one of these  20 suits, if this Bill passes and becomes law then that  21 policy decision is going to change and there is a  22 look-back provision and there is a forward-looking  23 provision. And it would apply -- I mean, I guess in  24 that vein I mean the best way to describe it is that</p>	<p>1 obviously I'm very supportive of the Bill and (inaudible  2 to reporter).</p> <p>3       SENATOR ADAMS: Thank you, Senator  4 Copeland. Senator Peterson.</p> <p>5       SENATOR PETERSON: Mr. President, if there  6 are no other questions for Mr. Clark, I ask that the  7 witness be excused.</p> <p>8       SENATOR ADAMS: Seeing no further questions  9 the witness may be excused. Senator Simpson.</p> <p>10       SENATOR SIMPSON: I'd ask for privilege of  11 the floor for Dr. Janice Chester.</p> <p>12       SENATOR ADAMS: Privilege of the floor has  13 been requested. Dr. Chester, seeing no objection,  14 please come forward. Please restate your name for the  15 record and who you represent.</p> <p>16       DR. JANICE CHESTER: My name is Dr. Janice  17 Chester and I'm representing myself.</p> <p>18       SENATOR ADAMS: Thank you, Dr. Chester.</p> <p>19 Senator Peterson. My mistake. Senator -- it's been a  20 long afternoon. I have been saying Senator Peterson  21 most of the time. Senator Simpson.</p> <p>22       SENATOR SIMPSON: I know. Thank you,  23 Mr. President. Dr. Chester, could you give us a little  24 bit about your credentials and your understanding of</p>
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18 (Pages 66 to 69)

<p style="text-align: right;">Page 70</p> <p>1 lead somebody to wonder why as somebody who is proud of    2 my profession and very invested in it, and somebody who    3 is very dedicated to my patients, as well as somebody    4 who is dedicated to be a patient advocate in my work    5 with NAMI why would I speak against a Bill which on the    6 surface of it appears to be something that would protect    7 patients.</p> <p>8 And basically there are two reasons for it:    9 One is to do with memory and the statute of limitations    10 and how those two things intertwine and in that sense I    11 want to go back to the idea of removing the statute of    12 limitations for life and the idea that a lot of the    13 victims of sexual abuse can't come forward after the    14 abuse or after they reach the age of majority because    15 they don't have the memory and it's not accessible to    16 them until many years or many decades have passed. And    17 I'm here to tell you that that is a highly debated    18 subject in psychiatry and it's not something that would    19 fall into the category of what nowadays is called    20 evidence-based medicine. And the debate about whether    21 you have -- when you have a memory of something, whether    22 that makes it true, goes back to the time of Freud, as    23 does this very issue.</p> <p>24 So when Freud's patients came forward with</p>	<p style="text-align: right;">Page 72</p> <p>1 Hopkins University, so they're pretty well credentialed    2 - what they have demonstrated is that it doesn't really    3 matter how vivid your memory is or how strongly you feel    4 the emotion when you report your memory, that all of    5 that doesn't prove that it's true. And they have also    6 gone on to do work of showing that in normal children    7 and normal adults that it's pretty easy to - if you set    8 the circumstances up right - to convince somebody that    9 something happened to them that didn't actually happen.    10 So you can implant a memory in a normal population, and    11 there is also some work to show that if you can do that    12 to a normal population that it must be even easier to do    13 to a fragile population.</p> <p>14 So, in the criminal law removing the    15 statute of limitations, as I said, makes sense because    16 you have what's missing, the missing ingredient of    17 deciding when you're the psychiatrist or whoever you are    18 that's hearing the story and you're trying to decide is    19 this memory a memory and I don't have to judge it for    20 truth, or is this memory truth, as you have what's    21 missing which is the corroboration. And most of the    22 professional societies, such as the American Psychiatric    23 Association, because the, pardon the expression, but the    24 jury is still out on whether these are recovered</p>
<p style="text-align: right;">Page 71</p> <p>1 repressed memories he first took them at face value and    2 thought that if it's a memory it's the truth and treated    3 it as such. He later reversed himself and thought that    4 coming forward with a memory many years later was    5 material to deal with in the therapy but it didn't    6 actually make it true. And as he went on he    7 flip-flopped. So even Freud couldn't decide where    8 somebody coming forward years later whether that made it    9 true.</p> <p>10 And I think that what Delaware has done by    11 removing the statute of limitations for criminal cases    12 makes good sense because then you have somebody who    13 might come forward with an accusation years and years    14 later but you have what's missing in the civil law    15 because you have the police and the police can act as    16 corroborators, because there has been a lot of work done    17 in this -- in this field of -- when somebody has a    18 memory that comes back to them after several years is it    19 true. Proponents who think that it is true call it    20 recovered memory, and the people who think that it's not    21 always true call it false memory syndrome, and neither    22 side has prevailed as of yet.</p> <p>23 And what the false memory syndrome people    24 have demonstrated - and many of them are at Johns</p>	<p style="text-align: right;">Page 73</p> <p>1 memories in all cases or whether there is really the    2 existence of the false memory syndrome, what they do is    3 that they have come down squarely on both sides of the    4 issue. Because I looked up the policy before coming    5 here and what they said is that, well, as a psychiatrist    6 or the psychologists have a policy on it, too, when you    7 get this kind of material from your patients just treat    8 it as material and don't try to get to the truth, try to    9 help the patient decide what's true for them. So, you    10 know, they really do straddle the fence on it.</p> <p>11 Now, I think that the principle behind the    12 law is a good one, and there are some changes that could    13 be made to the law under which I would feel that I could    14 support it. And I think there are two problems in the    15 way -- why I said I'm speaking against the Bill as    16 written. And the two problems in the Bill, one was    17 brought up during the attorney's testimony is the    18 business about malicious intent. And people who have    19 been tarred by the brush, families, mostly it's families    20 because this false memory syndrome came about when    21 people were tarred with false accusations and so then    22 the family members, usually accused of incest, banded    23 together and generated a whole new generation of    24 research, et cetera. And so if -- and their lives</p>

19 (Pages 70 to 73)

1 generally, especially if they have been -- if they're  
 2 rightfully accused nobody is going to feel too sorry for  
 3 them, but if they're falsely accused their lives are  
 4 over, too. And it's not just attorneys fees. They have  
 5 generally lost credibility at work, in the neighborhood,  
 6 being able to go to the soccer game, you name it and,  
 7 you know, nobody wants them living next door any more.

8 And the standard in this legislation, the  
 9 way it's written, saying that the most you can get back  
 10 is attorneys fees, and the standard for getting it back  
 11 is not just that you have to be not guilty or innocent,  
 12 but you have to prove malicious intent I think is - I'm  
 13 not a lawyer obviously - but I think nobody will ever be  
 14 able to meet that standard. So that standard would have  
 15 to be lower so that a person who was falsely accused  
 16 would have a chance to get reparations back for  
 17 themselves, financial or otherwise, to clear their good  
 18 name, but also to take away that language of them having  
 19 to prove malicious intent.

20 And the other thing that I think would make  
 21 it a fair Bill would be to look at saying well, there  
 22 can be a statute of limitations, but rather than  
 23 starting at the time that the event took place when you  
 24 were five or 14, that it should start at the age of

1 Dr. Tavani.

2 SENATOR ADAMS: Privilege of the floor has  
 3 been requested for Dr. Tavani. Seeing no objection,  
 4 please come forward.

5 Please restate your name for the record.

6 DR. CAROL TAVANI: Dr. Carol Tavani.

7 SENATOR ADAMS: Thank you, Dr. Tavani.

8 Senator Peterson.

9 SENATOR PETERSON: Yes, Dr. Tavani, I  
 10 assume that you just heard the testimony that was just  
 11 given.

12 DR. CAROL TAVANI: I did.

13 SENATOR PETERSON: And I would ask you to  
 14 respond to it, please.

15 DR. CAROL TAVANI: Yeah, I'd like to  
 16 respond to it. With due respect to Dr. Chester, she's a  
 17 colleague who speaks against the Bill, Dr. Chester is  
 18 saying that the studies are dated. What's interesting  
 19 is that when we look at the DSM 4 which was a very  
 20 conservatively-written document, it is in itself very  
 21 conservative with regard to matters like dissociative  
 22 amnesia and the inability to recall aspects of trauma in  
 23 post-traumatic stress disorder. The DSM 4, the fourth  
 24 version of it, was written in 1993. The reams of data

1 majority, and so, you know, once you're an adult you  
 2 have the decision to make, and I believe in Delaware  
 3 that would be 18, that you have, you know, a statute of  
 4 limitations where the clock starts ticking then about  
 5 whether or not you're prepared to face your accuser  
 6 within -- within, you know, a certain number of years.  
 7 And somebody, I believe it was you, Senator Simpson,  
 8 asked the question before about malpractice and I'm not  
 9 a hundred percent sure but I think for malpractice cases  
 10 I think it's two years. So, you know, a group would  
 11 have to get together to look at what would be a number  
 12 that would make sense for a Bill like this, but I think  
 13 something like that would sit well, you know, with me  
 14 and I think also with the profession.

15 Thank you for your time.

16 SENATOR ADAMS: Thank you very much.  
 17 Senator Simpson.

18 SENATOR SIMPSON: If there are no questions  
 19 I'll ask that the witness be excused.

20 SENATOR ADAMS: Seeing no questions, the  
 21 witness may be excused. Thank you very much. Senator  
 22 Peterson.

23 SENATOR PETERSON: Mr. President, I would  
 24 like to request the personal privilege of the floor for

1 and studies that were done that support the issue, the  
 2 concept of repressed memory and dissociative amnesia,  
 3 were done subsequent to the publication of the DSM 4.  
 4 So that -- that research is hardly dated.

5 Secondly, with regard to Freud as the be  
 6 all and the end all, not all of us espouse him as the  
 7 last word. He certainly didn't understand women very  
 8 well, and there are those of us who are not of that  
 9 school, so I wouldn't take that as the final word.

10 Next, with regard to the false memory thing  
 11 and the recovered -- the issue of recovered memory, you  
 12 know, most people who recover a memory weren't exactly  
 13 asking to recover it. It comes up. Something triggers  
 14 it. Many people were doing reasonably well except they  
 15 have these strange things that are happening until the  
 16 memory gets recovered and then life goes to hell in a  
 17 hand basket. So it's not as if they wanted to dream  
 18 this up. And then it comes back in a very fragmented  
 19 fashion and it's -- it's rather unusual that it never  
 20 really happened.

21 Certainly, as I said before, it's possible  
 22 that if somebody has an inept therapist who puts ideas  
 23 in somebody's head and doesn't ask questions in an  
 24 open-ended fashion and somebody is very suggestible then

1 something like a false memory can -- can occur, but the  
 2 whole idea of false memory has really fallen into  
 3 disrepute and that is not dated. Thank you.

4 SENATOR PETERSON: Doctor -- Mr. President.

5 SENATOR ADAMS: Senator Peterson.

6 SENATOR PETERSON: Dr. Tavani, one of the  
 7 things that Dr. Chester said is that this is not an  
 8 issue in criminal cases because the police are between  
 9 the accuser and the accused.

10 DR. CAROL TAVANI: Uh-huh.

11 SENATOR PETERSON: Would you agree that the  
 12 police never plant ideas in people's heads?

13 DR. CAROL TAVANI: People -- police plant  
 14 ideas in people's heads all the time. I wish I had a  
 15 nickel for every time I watched a videotape of an  
 16 interrogation. They suggest, they strong arm, not all  
 17 police, but some of them do. They certainly -- and also  
 18 they're not expected to be experts in how to ask a  
 19 question.

20 SENATOR PETERSON: So just like there --  
 21 I'm sorry, Mr. President, just like there are therapists  
 22 whose ethics are a little bit weak so, too, are there  
 23 police officers whose ethics might be a little weak, so  
 24 one doesn't serve as a better buffer than the other

1 necessarily?

2 DR. CAROL TAVANI: That's certainly  
 3 possible and some of it may go to ethics, but it also  
 4 may go to just not knowing how to ask a question that is  
 5 going to elicit the most valid possible answer. There  
 6 are ways to ask things and there are very open-ended  
 7 ways that are not leading the person.

8 SENATOR PETERSON: Dr. Tavani, are you  
 9 familiar with the Eric Eden case?

10 DR. CAROL TAVANI: Very familiar with it.

11 SENATOR PETERSON: Okay. Was suppressed  
 12 memory at issue in that case?

13 DR. CAROL TAVANI: I have examined Eric  
 14 Eden twice, in fact.

15 SENATOR PETERSON: Do you know what the  
 16 court said about that whole issue?

17 DR. CAROL TAVANI: I don't know what the  
 18 court said but he clearly had repression of memories,  
 19 and, again, he wasn't really asking to remember them.  
 20 He had some -- some difficulties in his relationships  
 21 and in other -- in other arenas and he had a lot of  
 22 psychosomatic things that turned out to be directly  
 23 referable to the manner in which he was abused.

24 SENATOR PETERSON: If there are no other

1 questions.

2 SENATOR ADAMS: Senator Venables.

3 SENATOR VENABLES: Thank you,  
 4 Mr. President. Listening to these two experts on  
 5 different sides it brought to my mind the issue that  
 6 happened a few years ago in California in relationship  
 7 to daycare centers and I think that it was pretty  
 8 evident five years later that these accusations,  
 9 according to what I read, had been told these children  
 10 so many times that they finally believed it and, in  
 11 turn, the jury believed it, and those people were  
 12 absolutely ruined.

13 DR. CAROL TAVANI: Uh-huh.

14 SENATOR VENABLES: And then the truth came  
 15 out, and yet you testified that there is no such thing  
 16 as repressed memories, that a psychiatrist can instill  
 17 into these people this? That's what I understood you to  
 18 say.

19 DR. CAROL TAVANI: I didn't say there is no  
 20 such thing as a repressed memory. What I said is that  
 21 if -- if people are asked a question in the wrong way  
 22 and they're suggestible, that idea can be planted in  
 23 their heads. So, you're right.

24 SENATOR VENABLES: Well, is that what

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1 SENATOR VENABLES: Well, I was just  
 2 wondering, if, you know, the childhood memory which I  
 3 think she indicated that it would be better, you know,  
 4 to not have the statute of limitations go back that  
 5 wrong, could get it mixed up very similar of what  
 6 happened in the daycare center.

7 DR. CAROL TAVANI: Well, I think there is  
 8 --

9 SENATOR VENABLES: My theory on this Bill,  
 10 and I'm probably going to vote for it, I'm scared of it,  
 11 I have got to tell you that and I have expressed this to  
 12 Senator Peterson that I am and I told her the reasons.  
 13 And I'm afraid of false accusations. And I know that  
 14 there has been a lot of testimony here today that  
 15 relieve my mind to some degree. I heard testimony, you  
 16 know, that there are going to be false, and then, of  
 17 course, I was surprised to hear that we're one of the  
 18 first states I guess other than California that is  
 19 tackling this type of legislation, it does scare me  
 20 about the broad aspects of what might happen. I think  
 21 about Boy Scouts troops, I think about Boys and Girls  
 22 Clubs, all these things run through my mind, you know,  
 23 what's the repercussion to them with the liability  
 24 insurance, something that might come up. I even think

1 example, to look at, you know, whether -- look at the  
 2 validity of what they're saying. If they're consciously  
 3 making this up there is testing that will indicate that.  
 4 So I think that's where the role of the experts come in  
 5 and due diligence in efforts at corroboration.

6 SENATOR VENABLES: Well, thank you.

7 DR. CAROL TAVANI: You're welcome.

8 SENATOR ADAMS: Thank you, Senator  
 9 Venable. Senator McDowell.

10 SENATOR McDOWELL: Thank you,  
 11 Mr. President. Dr. Tavani, I want to -- I hesitate to  
 12 step between feuding psychiatrists, I don't think I can  
 13 win in that event, but it seemed to me, I want to make  
 14 sure, but it seemed to me that Dr. Chester did not imply  
 15 that repressed memory is either all or nothing, but,  
 16 rather, I think her testimony suggested that there could  
 17 be instances of repressed memory and there could be  
 18 instances when apparent repressed memory is not really  
 19 there, that it's something else. I don't even think she  
 20 suggested what it is.

21 Are you suggesting that - and it seems to  
 22 me that you have been to some degree, at least by  
 23 implication - leaving that it's all or nothing, there  
 24 either is repressed memory and it's always -- if it

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1 about statutory rape. Back when I was growing up it was  
 2 not unusual at all for 20-year-old men that I called to  
 3 be going with 13-year-old girls, in fact, there were a  
 4 lot of cases where they married them. I hope that some  
 5 of that repressed memory where some of those don't use  
 6 that opportunity to come back because I assume that this  
 7 covers statutory rape.

8 DR. CAROL TAVANI: I can certainly  
 9 understand your concern but I think to eliminate the  
 10 look-back would render it largely meaningless, because  
 11 as you heard from Professor Hamilton people have to be  
 12 able to come forward when they are ready, and they don't  
 13 get ready for maybe 30 years. So without that it's sort  
 14 of gutted.

15 SENATOR VENABLES: That's what I -- and  
 16 certainly the witnesses that I heard, you know, telling  
 17 their stories was clear and convincing to me and I  
 18 assume it would be to a jury and I would think that what  
 19 they said here today in expressions that they had and  
 20 the tears that they shed they're not that good of  
 21 actors.

22 DR. CAROL TAVANI: Well, that's -- that's  
 23 where help from the experts come in because you can --  
 24 you can do certain kinds of testing on people. For

1 comes forward it's always accurate?

2 DR. CAROL TAVANI: No. In fact, when I had  
 3 the floor before I think I said something to the effect  
 4 of, number one, are there unscrupulous people who will  
 5 try to imply that something false happened? Yes, there  
 6 can always be. Those people are always out there,  
 7 whether it's a criminal case or a civil case or no  
 8 matter what the accusations are, and, also, there can be  
 9 memories that are suggested to somebody that then the  
 10 person believes as a false memory. It's been relatively  
 11 infrequent so far as we know, but it's not all or  
 12 nothing.

13 SENATOR McDOWELL: Okay. So it would have  
 14 to be either an unscrupulous person or somebody who was  
 15 misled? It couldn't come from any other -- spring from  
 16 any other source?

17 DR. CAROL TAVANI: It could come from a  
 18 number of intentions, if you will. It could be a  
 19 deliberate fabrication or it could be a misperception --

20 SENATOR McDowell: Thank you.

21 DR. CAROL TAVANI: -- or something that  
 22 wasn't accurate for a variety of reasons. Somebody  
 23 could be floridly paranoid and psychotic and the  
 24 ideation would be delusional, for example, but that

22 (Pages 82 to 85)

<p style="text-align: right;">Page 86</p> <p>1 could be sorted out.</p> <p>2 SENATOR ADAMS: Thank you, Senator</p> <p>3 McDowell. Senator Peterson.</p> <p>4 SENATOR PETERSON: No further questions for</p> <p>5 the witness.</p> <p>6 SENATOR ADAMS: Senator Simpson.</p> <p>7 SENATOR SIMPSON: Thank you, Mr. President.</p> <p>8 I think Dr. Chester did say there can be repressed</p> <p>9 memory and there can be false memory, and you would</p> <p>10 agree with that, is that correct?</p> <p>11 DR. CAROL TAVANI: Yes.</p> <p>12 SENATOR SIMPSON: Regardless of why that</p> <p>13 false memory is there, whether it was implanted by a</p> <p>14 suggestion from someone or it's just a false -- false</p> <p>15 memory?</p> <p>16 DR. CAROL TAVANI: It's possible, yes, but</p> <p>17 to disenfranchise all the people for whom --</p> <p>18 SENATOR SIMPSON: I'm not saying that. I'm</p> <p>19 just repeating what Dr. Chester said --</p> <p>20 DR. CAROL TAVANI: The answer would be --</p> <p>21 SENATOR SIMPSON: -- that there are</p> <p>22 repressed memory and there can be false memory?</p> <p>23 DR. CAROL TAVANI: The answer would be that</p> <p>24 there can be false memory but it's relatively infrequent</p>	<p style="text-align: right;">Page 88</p> <p>1 associated the idea that victims don't come forward with</p> <p>2 repressed memory. Those are two completely different</p> <p>3 things. What you heard today was four victims testify</p> <p>4 to their tortuous memories. You didn't have a repressed</p> <p>5 memory victim in here. What they told you is they</p> <p>6 couldn't live with the memories. In all the cases that</p> <p>7 I have had across the country in a variety of</p> <p>8 denominations I have not had a victim who has claimed</p> <p>9 repressed memory. I have had hundreds who have</p> <p>10 devastating memories but it's that torture and the</p> <p>11 inability to tell other people about it and the</p> <p>12 immaturity of the child that makes it hard to come</p> <p>13 forward. So I just wanted to make sure you understood.</p> <p>14 Repressed memory is a tiny, tiny aspect of this issue.</p> <p>15 The key is those who were abused, who never got to court</p> <p>16 because they were psychologically unprepared, not</p> <p>17 because they forgot about it, they just couldn't do it,</p> <p>18 and those are the ones why -- that are the reason you'd</p> <p>19 open the window.</p> <p>20 SENATOR ADAMS: Senator Simpson.</p> <p>21 SENATOR SIMPSON: I guess I would have a</p> <p>22 little bit of a problem with that because you look at it</p> <p>23 from the legal aspect of what you have seen come forth</p> <p>24 in the court system, not as a psychiatrist who may have</p>
<p style="text-align: right;">Page 87</p> <p>1 so far as we know.</p> <p>2 SENATOR ADAMS: Thank you, Senator Simpson.</p> <p>3 Senator Peterson.</p> <p>4 SENATOR PETERSON: Request that the witness</p> <p>5 be excused.</p> <p>6 SENATOR ADAMS: The witness may be excused.</p> <p>7 Thank you, Dr. Tavani. Senator Peterson.</p> <p>8 SENATOR PETERSON: Mr. President, I'd like</p> <p>9 to request personal privilege of the floor for Professor</p> <p>10 Hamilton.</p> <p>11 SENATOR ADAMS: Privilege of the floor has</p> <p>12 been requested for Professor Hamilton. Seeing no</p> <p>13 objection please come forward.</p> <p>14 Please restate your name for the record,</p> <p>15 please.</p> <p>16 MS. MARCI HAMILTON: My name is Marci</p> <p>17 Hamilton.</p> <p>18 SENATOR ADAMS: Thank you, Professor</p> <p>19 Hamilton. Senator Peterson.</p> <p>20 SENATOR PETERSON: Professor Hamilton,</p> <p>21 would you care to respond to the statements that were</p> <p>22 made earlier by Dr. Chester based on your experience?</p> <p>23 MS. MARCI HAMILTON: Dr. Chester's comments</p> <p>24 were started on a miscalculation. She said that she</p>	<p style="text-align: right;">Page 89</p> <p>1 heard actual questioning from many clients of hers that</p> <p>2 do have repressed memories. So, you know, while I</p> <p>3 respect your -- your legal opinion of what you have seen</p> <p>4 in court, you may not have seen or heard or reviewed the</p> <p>5 number of psychiatric cases that the two psychiatrists</p> <p>6 in question here today have presented.</p> <p>7 MS. MARCI HAMILTON: But what I'm</p> <p>8 explaining is that litigators don't see many repressed</p> <p>9 memory cases and that's all we're dealing with here.</p> <p>10 We're dealing with legal action. If they're in the</p> <p>11 psychiatric offices, that's one thing, but we're dealing</p> <p>12 with who actually comes to the litigators and who the</p> <p>13 litigators choose to represent, and litigators are not</p> <p>14 keen on those with false representations. So the fact</p> <p>15 of the matter is, in California it's just not been an</p> <p>16 issue despite the fact there is a window.</p> <p>17 I also wanted to add that the day care case</p> <p>18 you're talking about was in California, and California</p> <p>19 is the state that has the window that's had no problems</p> <p>20 with it. So that particular experience which was very</p> <p>21 vivid in Los Angeles has not undermined the validity or</p> <p>22 the goodness of the window there.</p> <p>23 SENATOR ADAMS: Senator Still.</p> <p>24 SENATOR STILL: Thank you, Mr. President.</p>

23 (Pages 86 to 89)

1 Professor Hamilton, on a different issue I have two  
 2 points that would help me clarify my position on the  
 3 Bill. I asked one individual who testified why there  
 4 was a two-year following the effective date of the Bill.  
 5 From your legal perspective across the United States on  
 6 line eight of the Bill it says for a period of two years  
 7 following the effective date and then it goes on, is two  
 8 years sufficient? Would one year be sufficient? Why  
 9 two years? I'm sure you must have had some import and  
 10 impact into the drafting of this Bill given your  
 11 testimony.

12 MS MARCI HAMILTON: Actually not this  
 13 particular Bill but model Bills. What we found in  
 14 California was that one year was enough for many to come  
 15 forward, roughly a thousand, and it was a mix of  
 16 individuals. But groups that had horrendous abuse, like  
 17 the Children of God which was a sex cult that started in  
 18 California and involved incest and group sex from the  
 19 age of three, those victims were not capable of coming  
 20 forward within the year. They -- they were -- they  
 21 didn't get the information, they didn't understand what  
 22 they needed to do and they were psychologically  
 23 debilitated. Two years, I think -- I started hearing  
 24 from the Children of God victims about six months after

1 protect the one person who chooses to grind that ax and  
 2 destroy some person's reputation. Can you honestly tell  
 3 me that when that happens to that one person that I'm  
 4 only entitled to my legal fees?

5 MS. MARCI HAMILTON: You mean in other than  
 6 damages or? The reason for that type of provision is  
 7 that you have to draw a balance between the defendant  
 8 and the victims, right? And so there is this  
 9 possibility you might have false accusations, as I have  
 10 stated it's very small, and so what are you going to do  
 11 in a circumstance where you have that rare case, and  
 12 what the Bill says is if the victim was acting  
 13 maliciously --

14 SENATOR STILL: Right.

15 MS. MARCI HAMILTON: -- in those  
 16 circumstances then the attorneys fees go forward. But  
 17 if there is lack of malice, what you're doing is you're  
 18 balancing. This is public policy. You're balancing  
 19 the interest of the adults and the interests of the  
 20 children and what we have done in the past is we have  
 21 always balanced the interests of the adults always more  
 22 heavily always than the children so that's -- go ahead.

23 SENATOR STILL: What I'd like is your  
 24 perspective in other states in how this is handled

1 the window had closed. So two years might have been  
 2 better.

3 Look, if I had my way I would abolish it  
 4 forward and backward and just move on. But I understand  
 5 that there is going to be a lot more resistance to that  
 6 than the two years. So the two years is the compromise.

7 SENATOR STILL: Okay. That explains that  
 8 from your point of view.

9 MS. MARCI HAMILTON: From my point of view.  
 10 SENATOR STILL: The last question I had  
 11 dealt with the malicious intent provision and being  
 12 unjustly accused. From your testimony and the others  
 13 before us, it would appear that it's a very, very small  
 14 percentage of people who falsely accuse.

15 MS MARCI HAMILTON: Yes.

16 SENATOR STILL: I mean almost (inaudible to  
 17 reporter).

18 MS. MARCI HAMILTON: Yes.

19 SENATOR STILL: However, if it's as  
 20 important to you and the sponsors of the Bill to enable  
 21 these people to be brought to accountability, whether  
 22 it's one or ten, I would think it would be just as  
 23 important, absent any other provisions in the Code for  
 24 the ability to recover your good name or reputation to

1 versus what Mr. Clark will provide regarding Delaware  
 2 law. So in your case from your perspective nationally  
 3 are other states just awarding attorneys fees for that  
 4 type of situation or are they also enabling that person  
 5 to get compensatory damages as well?

6 MS. MARCI HAMILTON: I don't know of  
 7 another Bill that provides for even the attorneys fees.

8 SENATOR STILL: So that -- that poor soul  
 9 that's accused unjustly, maliciously would only hope  
 10 that they might have recourse in another provision of  
 11 the Code for slander and libel?

12 MS. MARCI HAMILTON: Right, for defamation  
 13 and libel.

14 SENATOR ADAMS: Thank you, Senator Still.  
 15 Senator Peterson.

16 SENATOR PETERSON: Yes, Mr. President, just  
 17 one comment to that. The attorneys fees called for in  
 18 section C are not the exclusive remedies. You can also,  
 19 as Mr. Durashel testified last week at the hearing, you  
 20 can also sue for malicious prosecution, you can sue for  
 21 slander, so there are other remedies. The remedy that's  
 22 in there really was trying to address issues that you  
 23 and Senator Venables raised last year when we debated  
 24 House Bill 450 and I just wanted to give you some

<p style="text-align: right;">Page 94</p> <p>1 comfort level on the possibility of false claims.    2 If there are no other questions for the    3 witness, I would ask that she be excused.    4 SENATOR ADAMS: Seeing no further    5 questions, the witness may be excused. Thank you very    6 much. Senator Peterson.    7 Senator Amick.    8 SENATOR AMICK: Mr. President, this has    9 been a very difficult Bill for me. There is a reason    10 why we have statute of limitations and in my opinion    11 that reason has to do with the difficulty of a defendant    12 to prove where he or she were on a given date some 20    13 years or 30 years out and what happened to the witnesses    14 that are gone and not available. That's very    15 troublesome to me. It's a little different with murder    16 just because of the fact that murder is a major event in    17 anybody's life and being a witness to a murder is    18 something that no one tends to forget. And while this    19 is something that's very difficult sometimes for    20 individuals to reconstruct.    21 However, I had lengthy conversations with a    22 number of the victims and certainly they have    23 significant stories and they deserve the opportunity to    24 seek redress. That's why it's been very difficult and I</p>	<p style="text-align: right;">Page 96</p> <p>1 exemplary from my point of view. As a victim of child    2 molestation myself as a young man, when I had a phone    3 call from two individual dentists who called me to    4 support the Bill I put that aside and said I'd have to    5 really hear the testimony first because we have a    6 responsibility here to balance the scales of justice and    7 make sure that each person has an opportunity to be    8 heard, that the Bill needs to be vetted, and yes, I    9 remember Senate Bill 450 and I thank you for that    10 accommodation on the attorneys fees. That probably is    11 the only provision that I now have a real concern with    12 in that the one person who loses their reputation, their    13 business, their assets because of some malicious intent    14 may not have proper recourse from a person who may not    15 have any assets. They could lose it all. I have to    16 balance that with the damage that is done by an    17 individual to a family member purposely, willfully, with    18 no accountability today. I have done that in my own    19 mind. I'm satisfied that with the testimony today that    20 the recourse that's in this Bill is what we need to have    21 done.    22 I don't say that with any glee in my heart.    23 I don't say that with any recourse or accountability to    24 the person that did that to me. I have forgiven that</p>
<p style="text-align: right;">Page 95</p> <p>1 have reflected on the -- I'm sorry about that. This is    2 becoming more and more a struggle, I'm afraid. They    3 certainly deserve that redress of their grievance. The    4 part of this that I guess gives me the most concern is    5 that the question of the statute of limitations, but in    6 consultation with the victims I think they do deserve it    7 and I guess I reflected upon the fact that I have great    8 trust in the courts and the courts have the ability to    9 determine what is false, what is provable, and so in    10 light of that I made the determination to join Senator    11 Peterson in the sponsor of the Bill and I intend to vote    12 for it with some trepidations but it does seem to me    13 that it's something we need to resolve for the benefit    14 of the kids in this State.    15 SENATOR ADAMS: Thank you, Senator Amick.    16 Senator Peterson.    17 SENATOR PETERSON: Mr. President, if there    18 are no other comments or questions.    19 SENATOR ADAMS: Senator Still.    20 SENATOR STILL: To the Bill?    21 SENATOR PETERSON: Yes.    22 SENATOR STILL: Senator Peterson, I think    23 you have done a remarkable job with a very difficult    24 issue. Your testimony from your witnesses has been</p>	<p style="text-align: right;">Page 97</p> <p>1 person but I have never forgotten it. It was when I was    2 six years old. It wasn't a family member but it was a    3 friend of the family and the testimony makes it clear    4 that that's where the majority of the cases are.    5 I have never really gotten to talk about    6 that and I don't want to talk about it a whole lot    7 because it's something I have really - I guess to use    8 some of their phraseology here - I have developed some    9 mechanisms to deal with it and I have overcome it, and I    10 only hope and pray that the man who did it to me who was    11 16, maybe 17 years old has gotten over it but I doubt it    12 because I know for a fact - and I'm not repressing my    13 memory and I don't have a false memory of it, I can give    14 you the exact circumstances, the date and the time and    15 how it felt - I know that he did it to his sister. He    16 has a problem and he's still out there. He's not in the    17 church and the church today was portrayed as the evil    18 victim. They are part of the problem, 70 or 80 percent    19 of the problem. It's mostly a family problem.    20 The Bill will give us recourse. Will it    21 correct the problem? I -- I don't know about that.    22 Only society will correct that problem, but I do know    23 when those two dentists called me that they were    24 genuinely concerned about their child, that they</p>

25 (Pages 94 to 97)

<p style="text-align: center;">Page 98</p> <p>1 overlooked the issues of that child when the child came 2 to them and said I want to die, daddy, I don't want to 3 live any more. I never got to that problem with my 4 situation, but I could really understand where they were 5 coming from. I think we have done the best we can with 6 this Bill and I am going to support it.</p> <p>7 SENATOR ADAMS: Thank you, Senator Still. 8 Senator DeLuca.</p> <p>9 SENATOR DeLUCA: Thank you, Mr. President. 10 I don't want to delay it. I appreciate everybody's 11 patience today. The doctor made a comment earlier today 12 that what we have heard -- what we heard was shame, fear 13 and guilt, and I would just like to tell her that in 14 light of the testimony that I heard it came out as 15 courage from the witnesses that we have had here today, 16 to have the guts to stand up in front of the General 17 Assembly and bare their soul to represent not only them 18 but the other victims that haven't quite got to the 19 point where they have is nothing but a badge of courage 20 that they -- and I certainly hope that it helps.</p> <p>21 SENATOR ADAMS: Thank you, Senator DeLuca. 22 Senator McDowell.</p> <p>23 SENATOR McDOWELL: Thank you, 24 Mr. President. I think that the previous speakers have</p>	<p style="text-align: center;">Page 100</p> <p>1 said we have -- we have females of -- one gender in six, 2 one in six and one in four, if you average that out to 3 five, that means we have 150,000 Delawareans that are 4 victims of abuse, and then if you combine that with some 5 other statistics that we heard, we heard one of the 6 testimonies today that there is a high likelihood that 7 the abused will become abusers, and so if we put just a 8 conservative number to that, such as ten percent, that's 9 15,000, and if we take some of the other numbers we 10 heard, that it's between dozens and hundreds of 11 individuals abuses that an abuser will in their lifetime 12 approach, we're in enormous numbers.</p> <p>13 Now, I don't know how much of that is 14 accurate and how much is not, and it makes no difference 15 relative to the action we're taking here today, but I 16 think it does point one thing out and I hope we will not 17 walk away and leave this undone, we have woefully 18 inadequately funded mental health services in this State 19 and when you take those kinds of numbers we need to come 20 back and address that. I realize, Mr. President, I'm 21 slightly off --</p> <p>22 SENATOR ADAMS: Senator McDowell, you're -- 23 SENATOR McDOWELL: But it is something that 24 cannot be ignored when you look at those numbers and we</p>
<p style="text-align: center;">Page 99</p> <p>1 expressed a lot of people's opinions here. I think 2 particularly Senator Amick who talked about having 3 trepidation and weighing, weighing in the balance the 4 issues and we often, every day almost that we're in 5 session we have to do that. We'll probably be here 6 tomorrow weighing considerations between two different 7 paths that are opposed and we'll have to decide. And in 8 this particular case, in spite of my concerns that we 9 could make a mistake, we could hurt somebody, the 10 overwhelming factor is those people who have spoken to 11 us, the victims, indeed, we will hope that the process 12 will when it leaves this building and becomes enacted 13 will function correctly so that mistakes won't happen, 14 the people won't be hurt wrongly, but we do, I think, 15 need to provide this for the victims.</p> <p>16 There is one thing, though, that I'd like 17 to address briefly and that is there are several things 18 that have disturbed me in the testimony and I don't mean 19 disturbed the way disturbed by having empathy for the 20 victims who have come forward, as Tony said -- as 21 Senator DeLuca says, courageously come forward, but it's 22 the numbers. I'm very disturbed about what I hear about 23 the numbers. If I take the testimony on numbers and I 24 sort of put certain parts of it together, one of which</p>	<p style="text-align: center;">Page 101</p> <p>1 must come back and look at that. Thank you, 2 Mr. President.</p> <p>3 SENATOR ADAMS: Thank you, Senator 4 McDowell. Senator Connor.</p> <p>5 SENATOR CONNOR: Thank you, Mr. President. 6 Many of you have maybe have heard me say that each day 7 when my feet hit the floor I say a little mantra, and 8 I'm proud today to say, and I'll repeat it again, every 9 day a decision I make, a vote I cast, an advice I give 10 changes the course of someone's life. We have done that 11 here today. And I am proud to say it. For those that 12 are in the balcony we appreciate your attendance and I 13 can't tell you the last time I have seen it this full. 14 If that doesn't send a message to the other chamber I 15 don't know what does. They're going to need your help 16 over there, too. So you need to stand tall, and Madam 17 Senator, I'm so proud of you today, you have done a 18 remarkable job, Senator Peterson. Thank you.</p> <p>19 SENATOR ADAMS: Thank you, Senator Connor. 20 Senator Sokola.</p> <p>21 SENATOR SOKOLA: Thank you, Mr. President. 22 You know, we almost never get an issue that is 23 controversial that doesn't have more opposition than 24 support and we're seeing overwhelming support in just</p>

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<p style="text-align: right;">Page 102</p> <p>1 the general comments from people on the web guest book  2 as well as the organizations and individuals who showed  3 support on the child victim voice. We have heard and  4 Senator DeLuca said it very well about the victims who  5 did come forward, but that's very difficult for people  6 to do. We heard that taking the abuse was less painful  7 than stopping it. And over my 17 years we have had  8 issues relating to child sex abuse come up time and time  9 again and that's the one consistent element that we have  10 heard repeatedly. This is a very important step for the  11 State and I thank Senator Peterson for her leadership  12 and I intend to support it.</p> <p>13 SENATOR ADAMS: Thank you, Senator Sokola.  14 Senator McBride.</p> <p>15 SENATOR McBRIDE: Thank you, Mr. President.  16 You know, I have during the debate today I was thinking  17 about back in 19 -- in the 1980s when this chamber  18 started to think about a Victims Bill of Rights we were  19 in 1993, the next to the last state to pass a Victims  20 Bill of Rights. Today we had testimony that was quite  21 striking and I was going to go into a particular case in  22 Delaware but the hour is late so I'll bypass that, but  23 what we heard today, it wasn't used, but the term is  24 taking out the trash or spreading the garbage, and what</p>	<p style="text-align: right;">Page 104</p> <p>1 this Bill is about the children. It's about the  2 children who had no power, who had no voice, who had no  3 opportunity to bring their tormenters to justice. This  4 Bill is about the Gene Langes, the Rob Quills, the Susan  5 Days, the Christine Guislers, John Stills, countless  6 others whose lives have been forever changed and in some  7 cases destroyed. Some of these -- some of the victims  8 are not here today because they committed suicide. We  9 have heard a number of stories about that. These  10 children, many of whom are adults now, are still paying  11 the price for what was done to them. There was no  12 statute of limitations on their pain, but their abusers  13 walk free to abuse again and again.</p> <p>14 Who will speak for these children,  15 Mr. President? Who will protect them? I hope that it  16 will be the 144th General Assembly. With that,  17 Mr. President, I call for the roll.</p> <p>18 SENATOR ADAMS: Thank you, Senator  19 Peterson.</p> <p>20 Mr. Secretary, will you please call the  21 roll on Senate Bill number 29?</p> <p>22 THE CLERK: Senator Adams. Yes.  23 Senator Amick. Yes.  24 Senator Blevins. Yes.</p>
<p style="text-align: right;">Page 103</p> <p>1 had happened in the 90s, the school districts, not only  2 the Catholic Church, school districts had reassigned  3 these abusers to another location where they could abuse  4 victims again. So I think today is the day that  5 Delaware, the state that started the nation, has a  6 chance to lead in the United States of America. This  7 would be the strongest, we're only the second state to  8 pass something like this, we have an opportunity today  9 for the victims and the survivors, some of whom we have  10 heard today, but there are many others. There are some  11 in the building obviously and there are many others  12 outside this building that are counting on us to help  13 them. As a witness said, this Bill does nothing more  14 than open the courthouse door for the victims and  15 survivors and I sure hope it passes.</p> <p>16 SENATOR ADAMS: Thank you, Senator McBride.  17 Senator Peterson.</p> <p>18 SENATOR PETERSON: Mr. President, I think  19 we have come to the end of a long, painful debate,  20 painful for the victims who have come forward and I can  21 tell you that around the chambers and up in the balcony  22 there are dozens more who could have come up to the  23 lectern and talked about their own abuse but I think you  24 got the picture. And in closing, I'd like to say that</p>	<p style="text-align: right;">Page 105</p> <p>1 Senator Bonini, absent.  2 Senator Bunting. Yes.  3 Senator Cloutier.  4 SENATOR CLOUTIER: Yes.  5 THE CLERK: Yes.  6 Senator Connor.  7 SENATOR CONNOR: Yes.  8 THE CLERK: Yes.  9 Senator Cook. Yes.  10 Senator Copeland.  11 SENATOR COPELAND: Yes.  12 THE CLERK: Yes.  13 Senator DeLuca.  14 SENATOR DeLUCA: Yes.  15 THE CLERK: Yes.  16 Senator Henry.  17 SENATOR HENRY: Yes.  18 THE CLERK: Yes.  19 Senator Marshall.  20 SENATOR MARSHALL: Yes.  21 THE CLERK: Yes.  22 Senator McBride.  23 SENATOR McBRIDE: Yes.  24 THE CLERK: Yes.</p>

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1 Senator McDowell.  
 2 SENATOR McDOWELL: Yes.  
 3 THE CLERK: Yes.  
 4 Senator Peterson.  
 5 SENATOR PETERSON: Yes.  
 6 THE CLERK: Yes.  
 7 Senator Simpson.  
 8 SENATOR SIMPSON: Yes.  
 9 THE CLERK: Yes.  
 10 Senator Sokola. Yes.  
 11 Senator Sorenson.  
 12 SENATOR SORENSON: Yes.  
 13 THE CLERK: Yes.  
 14 Senator Still.  
 15 SENATOR STILL: Yes.  
 16 THE CLERK: Yes.  
 17 Senator Vaughn, absent.  
 18 Senator Venables.  
 19 SENATOR VENABLES: Yes.  
 20 THE CLERK: Yes. Mr. President, the roll  
 21 call on Senate Bill number 29, 19 yes and two absent.  
 22 SENATOR ADAMS: Senate Bill number 29,  
 23 having received the required number of votes, declared  
 24 passed the Senate.

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1 State of Delaware      }  
 2                         }  
 3 County of New Castle    }

5  
 6  
 7 C E R T I F I C A T E  
 8

9 I, Elaine G. Parrish, Registered Professional  
 10 Reporter and Notary Public, do hereby certify that the  
 11 foregoing record, pages 1 to 107 inclusive, is a  
 12 transcript of my stenographic notes taken from an  
 13 audiotape in the above-captioned matter.

14 IN WITNESS WHEREOF, I have hereunto set my  
 15 hand and seal this 3rd day of October, 2007, at  
 16 Wilmington.

17  
 18  
 19  
 20 Elaine G. Parrish  
 21 Certification No. 170-RPR  
 22 (Expires January 31, 2009)

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**In The Matter Of:**

# **Sentate of Delaware**

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**Senate Bill 29**

**Tape Recorded Hearing**

**April 4, 2007**

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**In The Matter Of:**

# **House Judiciary Committee of Delaware**

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**Audiotaped Hearing - Act to amend Title 10 of the Delaware  
Code**

**Senate Bill 29**

**May 29, 2007**

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Tape Recorded Hearing

Before the House Judiciary Committee of Delaware

IN RE: SENATE BILL 29: An Act to amend Title 10 of the Delaware Code by removing the statute of limitations for civil suits relating to child sexual abuse and adding related provisions regarding such suits.

The following is an audiotaped hearing before the House Judiciary Committee held on May 29, 2007, transcribed by Elaine G. Parrish, RPR, CRR.

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<p style="text-align: right;">Page 2</p> <p>1           REPRESENTATIVE VALIHURA: Good afternoon, 2 everyone. We're going to call the Judiciary Committee 3 to order. I want to thank everyone for coming out on 4 this beautiful day here in Delaware, especially after 5 the wonderful holiday weekend, and apparently, as I have 6 heard, our beach communities did very well over the 7 weekend, so thank the economy for that.</p> <p>8           I am going to start the meeting off by 9 introducing the members of the committee. I'll have 10 them introduce themselves and I'll start over here to my 11 left.</p> <p>12           REPRESENTATIVE MARSHALL: Melanie Marshall, 13 5th District.</p> <p>14           REPRESENTATIVE HUDSON: State 15 Representative Deborah Hudson.</p> <p>16           REPRESENTATIVE MITCHELL: State 17 Representative Larry Mitchell from the 13th.</p> <p>18           REPRESENTATIVE JOHNSON: State 19 Representative James Johnson from the 16th.</p> <p>20           REPRESENTATIVE LAVELLE: Representative 21 Greg Lavelle.</p> <p>22           REPRESENTATIVE STONE: State Representative 23 Donna Stone.</p> <p>24           REPRESENTATIVE VALIHURA: And I am Bob</p>	<p style="text-align: right;">Page 4</p> <p>1 presentations.</p> <p>2           Representative Hudson, any questions or 3 comments at this time? No. Okay. I have a request of 4 a good friend who wanted to go first, and so I will 5 invite her up to the podium. Pat Michael.</p> <p>6           MS. PAT MICHAEL: Thank you very much. I 7 appreciate it. I do have to go also down to the Joint 8 Finance Committee that's why I asked to go first.</p> <p>9           My name is Pat Michael and I am the 10 Director of the Developmental Disabilities Council and I 11 thank you for the opportunity to address here today. I 12 am here in support of Bill Number 29 as a Roman 13 Catholic, as a survivor of childhood sexual assault and 14 as the Director of the Development Disabilities Council. 15 Those of you who have heard me speak a few years ago in 16 support of House Bill 65 and 66 realize that people with 17 disabilities are four times more likely to be victims of 18 crimes than the general population and more so for 19 sexual crimes.</p> <p>20           Recently a child in special education with 21 a disability was sexually victimized by a staff person 22 at his school in Delaware. This is a person whose duty 23 it is to be responsible for this child and to protect 24 this child and all children in the care of the school.</p>
<p style="text-align: right;">Page 3</p> <p>1           Valihura, State Representative, Chair of this committee. 2 Nancy Wagner, also a member of the committee, is -- was 3 here. She wanted you to make sure that you all know 4 that she is paying attention. However, unfortunately 5 for her, her schedule requires her to be down in the 6 Joint Finance Committee meeting which is going on at the 7 same time, so she can not be here with us this 8 afternoon.</p> <p>9           I do want folks to understand before we get 10 started with the presentation that this particular Bill 11 is taking up a lot of our time in terms of what I would 12 call discussions among members of the General Assembly. 13 It is -- it is being discussed in personal time. It is 14 being discussed during business time, and it is being 15 really vetted among all of our colleagues. It has taken 16 on a life of its own I might say. But it is one of the 17 most important Bills that we will see this year and I 18 think taking the time that we are today to continue on 19 with the discussion is very helpful for all of us on the 20 committee, as well as ultimately for the members who 21 aren't on this committee.</p> <p>22           At this time I want to open it up for 23 members of the committee if anyone has any comments they 24 might want to make before we start with the</p>	<p style="text-align: right;">Page 5</p> <p>1           This is a common demonstration for what happens to 2 people with disabilities throughout their lives. Often 3 they are victimized repeatedly over time because they're 4 vulnerable, they often cannot tell when the crimes 5 occurs because of their disability, and they are often 6 not believed when they do tell.</p> <p>7           We must hold perpetrators accountable, both 8 criminally and civilly, no matter when these crimes 9 occur. People must be afforded the opportunity to find 10 justice when they're able to speak about crimes. You 11 all know me and my abilities to speak for others.</p> <p>12           I was in my 30s before I was able to talk 13 about what happened to me when I was 12. Think about 14 someone who is much less capable than I to speak for him 15 or herself. How can we put a limit on that time?</p> <p>16           Please vote yes for Senate Bill Number 29 today so that 17 we can all find justice.</p> <p>18           REPRESENTATIVE VALIHURA: Thank you, Pat. 19 At this time I'd ask Dr. Tom Connelly to come forward, 20 please. Dr. Connelly, welcome.</p> <p>21           DR. TOM CONNELLY: Thank you, 22 Representative Valihura. I am here today to speak for 23 the most valuable treasure that we have in the State of 24 Delaware. The treasure is more precious than money or</p>

2 (Pages 2 to 5)

<p style="text-align: right;">Page 6</p> <p>1 land or any measure of institutional wealth. This 2 priceless treasure is our children. They don't have a 3 vote, nor do they make decisions that affect their 4 lives. They depend on us to protect them. We adults 5 have failed our children.</p> <p>6 Thousands of lives have been destroyed 7 because of a tragically flawed law that is still on the 8 books as we sit here in this chamber. This antiquated 9 law only allows a child two years to come forward and 10 report sexual assault by an adult. This legal loophole 11 has allowed child sexual predators to get away with 12 their unspeakable crimes.</p> <p>13 Three weeks ago we heard heart-wrenching 14 testimony from victims whose lives have been forever 15 altered by these crimes. Nelson Lamb testified about 16 four Cub Scouts, including his son, Barry, who were 17 abused by their parish priest, Father Edward Dudzinski. 18 He told us that two of the boys committed suicide, one 19 died of a drug overdose, and Barry, Barry is still 20 dealing with substance abuse and psychological problems 21 because of the abuse by Dudzinski. Nelson Lamb has had 22 enough.</p> <p>23 Jean Lange talked about being sexually 24 abused by her father from the age of seven until she was</p>	<p style="text-align: right;">Page 8</p> <p>1 team. Christine Geisler has had enough. 2 One of the largest coalitions to support a 3 Bill in recent history, including law enforcement 4 officers, members of the medical community, churches, 5 the president of the Rabbinical Society of Delaware, 36 6 of Delaware's leading nonprofit groups, business 7 leaders, three former governors, the AFL-CIO, Common 8 Cause, former FBI Director Judge Louie Freeh and many 9 others all signed to support this Bill as written 10 without amendments. This large and diverse coalition to 11 give Delaware's child sex abuse victims a voice has had 12 enough.</p> <p>13 The members of the Delaware Senate had a 14 long and emotional debate and Senator John Still did his 15 due diligence in making sure that in his mind this is a 16 fair Bill. And then courageously told the day as a six 17 year old when he was sexually molested by a neighbor. 18 His words of forgiven but never forgotten, will always 19 resonate in my mind. Senator John Still and the members 20 of the Senate have had enough.</p> <p>21 The two powerful institutions that oppose 22 this Bill are the Catholic Church and the insurance 23 industry. The church, my church, wants to hide their 24 secrets. Just as in Boston under the infamous Cardinal</p>
<p style="text-align: right;">Page 7</p> <p>1 15. She told us how his acts divided and destroyed her 2 family. Jean Lange has had enough.</p> <p>3 Rob Quill described that summer day when he 4 was in the seventh grade, that he along with four other 5 boys were taken to an overnight to the beach by their 6 parish priest, Father Francis DeLuca, a night when his 7 childhood innocence was destroyed by this vicious 8 predator. He described how he has suffered since that 9 day and he has to give up his career as a lawyer in 10 Federal Court of Appeals because of the horrible 11 nightmare of child abuse that has never gone away. The 12 memory only intensified as he got older and now he's on 13 disability with post-traumatic stress disorder.</p> <p>14 In the meantime, in the meantime, DeLuca 15 has had a 50-year career of molesting children until he 16 was finally caught by police in Syracuse, New York, 17 where he admitted his guilt. He was 78 years old at 18 that time of his arrest and living on a full pension 19 from the Diocese of Wilmington.</p> <p>20 Rob Quill has had enough.</p> <p>21 Christine Geisler told of horrific abuse 22 she suffered as a small child at the hands of a 23 neighbor. Sadly, so many of her friends have also been 24 sexually abused that the number could field a softball</p>	<p style="text-align: right;">Page 9</p> <p>1 Law who covered up for and transferred predator priests 2 from parish to parish to parish while they 3 continued to abuse hundreds of children. The church 4 leaders in Delaware over many years have done exactly 5 the same thing.</p> <p>6 You heard testimony three weeks ago by 7 Catholic priests who expressed concern that if this 8 civil law is enacted the Diocese might have to close 9 schools and churches. To date the thousands of claims 10 having been settled throughout the United States not one 11 church, school or hospital has been closed, not one. 12 Not because of civil windows, not because of sex abuse 13 settlements.</p> <p>14 The reason this did not happen was the 15 church is heavily insured and holds vast amounts of 16 commercial real estate and the average settlement 17 awarded to a victim is only a hundred thousand dollars. 18 Everybody talks about 41 million dollars. That was just 19 the jury's sense of outrage at what happened to 20 Commander Whitwell. When they negotiate back and forth 21 between the lawyers the average settlement is \$100,000.</p> <p>22 Remember, the majority of priests are not 23 child sex predators. These evil priests only represent 24 seven percent of the total of all predators. The irony</p>

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1 is that the net effect of the church trying to stop and  
 2 weaken bills like Senate Bill 29 is to allow the other  
 3 predators to continue in their crimes with impunity.

4 The second powerful group that is working  
 5 hard with their teams of lobbyists to defeat this Bill  
 6 is the insurance industry. The insurance companies  
 7 collected premiums for liability insurance for decades  
 8 and now they would like to be excluded from a Child  
 9 Victims Act. Their argument is that when they wrote  
 10 liability insurance many years ago it was based on the  
 11 two-year statute of limitations. They think it is  
 12 unfair to change the rules of the game. I don't know  
 13 the answer to the fairness question. However, it is not  
 14 within the scope of this Bill. This issue must be  
 15 negotiated and settled between the insured institutions  
 16 and the insurance companies.

17 The third group you'll hear from today are  
 18 also victims in a certain sense. They are here because  
 19 of the scare tactics of the lobbyists for the church and  
 20 the insurance industry. These groups have nothing to  
 21 fear from this Bill. Senate Bill 29 provides that all  
 22 institutions that have been guilty of gross negligence  
 23 in their duty to protecting the children under their  
 24 care can be sued. Gross negligence is a very high legal

1 Pass this act so we can identify through  
 2 the civil window these unindicted criminals. Don't let  
 3 another year go by without bringing them to justice.  
 4 The place and time is here and now. We must send a  
 5 message. The message is that the State of Delaware will  
 6 no longer tolerate these horrible crimes. The message  
 7 is that we demand justice. The message is that we will  
 8 not prioritize the reputation of the church. We will  
 9 not prioritize the money of insurance companies over the  
 10 safety and welfare of Delaware's innocent children.  
 11 Thank you, Mr. Chairman.

12 REPRESENTATIVE VALIHURA: Thank you.  
 13 Members of the committee have any input? Seeing none,  
 14 thank you very much.

15 Let me just remind everyone of what I think  
 16 are the ground rules for today and that is that those  
 17 folks who signed up today will be limited to three  
 18 minutes. Those folks who were on the list that we  
 19 didn't get to last time will have a little bit more  
 20 freedom that we just have saw on our first committee  
 21 hearing, as well as -- Orso organization is five  
 22 minutes, that's correct.

23 At this point Sister Maureen Paul Turlish.  
 24 SISTER MAUREEN TURLISH: Representative

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1 standard to prove. In California the Bill is only  
 2 simple negligence.

3 Under gross negligence if it can be proved  
 4 that a nonprofit is guilty of placing known sex  
 5 predators in charge of children, if they knowingly  
 6 covered up child sex abuse by these predators, then and  
 7 only then can they be sued under the civil window. I  
 8 seriously doubt that any of the nonprofits in Delaware  
 9 are guilty of these crimes. However, if they are, they  
 10 deserve to be sued and put out of business.

11 Also, the Attorney General's office has  
 12 recently ruled that all institutions, including the  
 13 State of Delaware, are included under the one time,  
 14 two-year window. No one institution is excluded if they  
 15 have been guilty of gross negligence.

16 Finally, to the members of the 144th  
 17 General Assembly, this is your chance to help children.  
 18 This is your chance to give the victims of childhood sex  
 19 abuse their civil rights. This Bill is fair and simple  
 20 and should be passed as written. The 150,000  
 21 Delawareans whose lives have been ruined by these  
 22 reprehensible criminals have had enough. I would hope  
 23 the members of Delaware's House of Representatives also  
 24 have had enough.

1 Hudson, members of the House Judiciary Committee, I am  
 2 Sister Maureen Paul Turlish, formerly a fine arts  
 3 teacher at St. Elizabeth's High School in Wilmington,  
 4 Delaware. I have been a sister of Notre Dame de Namur  
 5 for almost 50 years, and I have been a member of the  
 6 Diocese of Wilmington since 1983. In addition to the  
 7 Diocese of Wilmington I have taught and chaired  
 8 departments at Archbishop Wood and Lansdale Catholic  
 9 High Schools in the Archdiocese of Philadelphia. I have  
 10 also taught in the Archdiocese of Washington, D.C. and  
 11 Baltimore, Maryland.

12 I am here today representing neither the  
 13 Diocese of Wilmington nor my religious community. I am  
 14 not here today as a paid lobbyist but as an individual  
 15 resident of Delaware speaking for herself and a victims  
 16 advocate and a member of the coalition Child Victims  
 17 Voice who supports the full passage of Senate Bill 29  
 18 without amendments. We have all become aware in the  
 19 last five years, particularly in the light of the  
 20 Philadelphia Grand Jury report of the ineffectiveness of  
 21 most state's laws protecting our children. It is no  
 22 different in Delaware. But I am here today to say that  
 23 we can make a difference by the passage of Senate Bill  
 24 29 and even set an example for other states.

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1 Senate Bill 29 covers everyone and  
 2 discriminates against no one. It is definitely not  
 3 anti-Catholic and it is not Catholic bashing. It holds  
 4 everyone's feet to the fire, as well it should. Having  
 5 said that, however, what the ongoing sexual abuse  
 6 scandal in the Catholic Church has pointed out to us is  
 7 the absolute necessity of upgrading our laws so that our  
 8 children will be adequately protected. If the Bishops,  
 9 for example, had followed even minimally the  
 10 requirements of the laws in place at the times these  
 11 crimes against children were perpetrated they would not  
 12 have had to take extraordinary precautions later to  
 13 insure that sexual misconduct did not reoccur. The  
 14 remedy should have been to rid the body of Christ, the  
 15 church, of this cancer. To the shame of all Catholics  
 16 this was not done because that was not the policy or the  
 17 practice in place at the time.

18 Clearly, no institution can be trusted to  
 19 police itself. Sadly, we have become aware of this in  
 20 regard to other large religious denominations, including  
 21 the Baptists, Episcopalian, Jewish, Latter Day Saints,  
 22 along with secular institutions and smaller groups, both  
 23 religious and secular. But the responsibility to  
 24 protect the common good belongs to the State. The

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1 You will hear that it is about money. It  
 2 cannot be about money when in major cities across the  
 3 country hundreds of thousands of dollars are spent each  
 4 year to retain law firms and public relation firms, to  
 5 prevent records from becoming public, and to lobby to  
 6 put a kinder, gentler face on hardball legal  
 7 maneuvering. It cannot be about money when additional  
 8 lobbyists are hired at hundreds of dollars an hour to  
 9 oppose necessary legislation. Even if it were about the  
 10 money, is there a price one can put on the violation of  
 11 a child's soul and body?

12 It is about the records, like those records  
 13 made public in Boston and the records now being forcibly  
 14 made public in California because they have successfully  
 15 passed window legislation. In California victims of  
 16 childhood sexual abuse by parents, doctors, teachers and  
 17 coaches, in addition to church ministers, are finally  
 18 having their day of justice in a court of law. The full  
 19 passage of Senate Bill 29 without amendment will  
 20 accomplish this.

21 It is about the records when institutions  
 22 declare bankruptcy on the eve of trial dates as has been  
 23 the case with the four Diocese declaring Chapter 11, not  
 24 Chapter 7, bankruptcy. The Diocese of Portland,

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1 primary mission of churches, no matter the denomination,  
 2 is to take care of the spiritual well being of its  
 3 people and to protect them from harm. Leadership fails  
 4 when it abandons its children in a misguided attempt to  
 5 prevent scandal.

6 You will hear that it is not fair to bring  
 7 up abuses that happened ten, 20, 30 or even 40 or more  
 8 years ago. But is it fair that individuals who have  
 9 suffered over so many years will even now receive no  
 10 justice? In our country there should be provisions in  
 11 the law for justice, especially when egregious crimes  
 12 have been committed against the young, when the law  
 13 itself has been circumvented by enablers who have  
 14 conspired to hide crimes of such magnitude and  
 15 depravity.

16 In advocating for changes in the civil  
 17 statute of limitations Bishop Thomas Gumbleton of  
 18 Detroit endorsed legislation in Ohio that would open a  
 19 window for sexual abuse victims to file lawsuits even if  
 20 the abuse took place decades ago. So let us be fair to  
 21 them, the victims. The full passage of Senate Bill 29  
 22 without amendment will accomplish this. I do not  
 23 believe that removing the time limits on lawsuits will  
 24 put an extraordinary burden on any institution.

1 Spokane, Tucson and Davenport never said they were  
 2 running out of money. No, in these cases the reasons  
 3 for declaring Chapter 11 bankruptcy was more to avoid  
 4 opening church files on the eve of going to trial than  
 5 anything else. Moreover, in settling legislation -- in  
 6 settling litigation Bishops have been very careful to  
 7 state clearly that no churches, parishes, schools or  
 8 programs were shuttered, suppressed, closed or cut back  
 9 because of settlements with victims of childhood sexual  
 10 abuse.

11 One of the most important sections of  
 12 Senate Bill 29 is the window legislation for bringing  
 13 forward suits involving victims who were abused many  
 14 years ago. It will force all institutions, religious  
 15 and secular, to make public the paper trail, the records  
 16 of predators who were known, protected and enabled in  
 17 their crimes against children, their crimes against  
 18 humanity because, make no mistake about it, such acts,  
 19 such crimes are in violation of every human rights  
 20 convention and document I have ever read.

21 In the past five years I have talked with  
 22 scores of individuals who were sexually abused as  
 23 children and it is heart wrenching. In fact, in this  
 24 very building last year I heard one of my former ninth

5 (Pages 14 to 17)

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1 grade students speak about the abuse she suffered for  
 2 years at the hands of her father. I did not know in  
 3 2002 when the church's sexual abuse problems exploded in  
 4 the Archdiocese of Boston that this same student had  
 5 been abused not just in the ninth grade but throughout  
 6 her high school career, again by her father. Neither  
 7 did I know that I knew any sexually abusive priests. I  
 8 know now that I did. The priest brother of a friend,  
 9 Sister friend of mine, was not only an abuser but was  
 10 part of a pedophile ring of abusers in another state.  
 11 One of the priests in that ring, only because he moved  
 12 out of state, was prosecuted under tolling laws, found  
 13 guilty and sentenced to 20 years in prison.

14 Yes, abuse starts in the home with the  
 15 family, but it doesn't stop there. No country,  
 16 government, corporation, organization, no school and no  
 17 church is immune. The reality of past sexual  
 18 exploitation has to be recognized, accepted and dealt  
 19 with. It is no less real, no less degrading, and no  
 20 less harmful in long-term effect than the present  
 21 trafficking in women and children and the international  
 22 sex trade as discussed by Archbishop Celestino Migliore,  
 23 Apostolic Nuncio of the Holy See, Permanent Observer  
 24 Mission to the United Nations, in a March 2nd, 2007

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1 address to the UN Economic and Social Council's 51st  
 2 session on the status of women.

3 It is unconscionable that in the United  
 4 States and in countries around the world the church is  
 5 aggressively fighting against abuse victims and going to  
 6 court in a misguided attempt to protect the church's  
 7 reputation and avoid scandal rather than being proactive  
 8 in its concern for the victims. This is a right to life  
 9 issue. Justice, like charity, also begins at home, but  
 10 it doesn't end there either. The institutional church  
 11 has a grave moral responsibility regarding the welfare  
 12 of all God's children and it must take responsibility  
 13 regardless of when the abuse took place.

14 The Roman Catholic Church was one of the  
 15 early signatories to the United Nations convention on  
 16 the rights of the child in 1990. However, as noted in a  
 17 shadow report on implementation authorized by the United  
 18 Nations in 2002, the Holy See has not submitted periodic  
 19 compliance reports beyond its initial report in 1994  
 20 making it accountable to the world community for the  
 21 implementation of the convention. And, as far as I can  
 22 determine from NGOs, follow-up reporting in 1997 has not  
 23 yet been submitted ten years after being required.  
 24 Indeed, no periodic reports have been submitted up to

1 the present time. This is troubling at a time when  
 2 peoples of goodwill are deeply concerned about  
 3 protecting children, as well as women, immigrants,  
 4 trafficked people and indigenous peoples.

5 The Diocese of Wilmington like most, but  
 6 not all in the United States, has followed the mandates  
 7 of the United States Conference of Catholic Bishops in  
 8 establishing Diocesan programs which include criminal  
 9 background checks on all church ministers, teachers,  
 10 volunteers and individuals. Training workshops and  
 11 courses for all, including student programs, have been  
 12 part of the Diocesan programs for many years. In the  
 13 Diocese of Wilmington and across the United States there  
 14 are now abuse coordinators and review boards, and this  
 15 is very commendable, but it needs to be remembered that  
 16 this was done only as a result of the church's mandate  
 17 in 2002 and it will be some time before the  
 18 effectiveness of these programs can be known.

19 Baltimore's Cardinal Keeler described  
 20 childhood sexual abuse as murder of the soul and it  
 21 truly is. The sins, the crimes of the past, cry out for  
 22 justice, and it is incumbent on you, our legislators,  
 23 that justice be rendered. The full passage of Senate  
 24 Bill 29 without amendment will accomplish this. Thank

6 (Pages 18 to 21)

<p style="text-align: right;">Page 22</p> <p>1 and believe that offenders should be held accountable.</p> <p>2 My concern focuses on the agencies. I urge</p> <p>3 you to consider that the legislation as written might</p> <p>4 devastate nonprofits in our State. We simply do not</p> <p>5 have records of our coaches and volunteers going back</p> <p>6 30, 40 and 50 years ago, in our case back to 1931. If</p> <p>7 someone came forward tomorrow claiming they were</p> <p>8 sexually assaulted by a club coach 30 years ago I'd have</p> <p>9 no way, no way of digging out those records, no</p> <p>10 insurance coverage to pay, no way of disproving gross</p> <p>11 negligence or recklessness or any other legal</p> <p>12 terminology put into that legislation. As written the</p> <p>13 legislation could honestly bankrupt us and maybe other</p> <p>14 smaller nonprofits in the State.</p> <p>15 I am asking for a bit of reasonableness.</p> <p>16 There should be amendments to the Bill that limit its</p> <p>17 retroactivity as it relates to the agency or past</p> <p>18 incidents and require actual knowledge on the part of</p> <p>19 the nonprofit. I urge you to consider such, such that</p> <p>20 makes it clear. Our legal counsel believes it is not.</p> <p>21 Please do not jeopardize the tremendous work we do on</p> <p>22 behalf of the youth in our State.</p> <p>23 I'm not a lawyer but I am on the front</p> <p>24 lines of trying to keep our kids out of trouble and in</p>	<p style="text-align: right;">Page 24</p> <p>1 you know what the definition of gross negligence is?</p> <p>2 MR. GEORGE KRUPANSKI: I only know what our</p> <p>3 attorneys told us.</p> <p>4 SENATOR PETERSON: And what did your</p> <p>5 attorneys tell you?</p> <p>6 MR. GEORGE KRUPANSKI: They told us that</p> <p>7 this might make agencies like ours liable.</p> <p>8 SENATOR PETERSON: Okay. The definition of</p> <p>9 gross negligence is the intentional failure, intentional</p> <p>10 failure, to perform a manifest duty in reckless</p> <p>11 disregard of the consequences as affecting the life or</p> <p>12 property of another. Given that definition, does that</p> <p>13 take care of your concern about actual knowledge?</p> <p>14 MR. GEORGE KRUPANSKI: I'm not sure I know</p> <p>15 the answer to that. I'm not trying to dodge a question.</p> <p>16 Let me be clear. Agencies that were aware of this type</p> <p>17 of incident, swept it under the rug or purposely looked</p> <p>18 the other way, ought to be shut down. People that were</p> <p>19 involved in this type of crime need to be locked up and</p> <p>20 the key thrown away. Our attorney says that when we try</p> <p>21 to flip back to our records those records won't be</p> <p>22 there. We don't go back 40 or 50 years.</p> <p>23 SENATOR PETERSON: That brings me to my</p> <p>24 second point. Do you realize that in a tort claim the</p>
<p style="text-align: right;">Page 23</p> <p>1 mentoring relationships with counselors and coaches who</p> <p>2 are good people that would never cross that line.</p> <p>3 Please are consider carefully the impact of the</p> <p>4 legislation and the impact it could have in the name of</p> <p>5 protecting our kids. I welcome the opportunity to work</p> <p>6 with you to make this legislation work as intended to</p> <p>7 truly help those who have been victimized by adults they</p> <p>8 trusted. Thank you.</p> <p>9 REPRESENTATIVE VALIHURA: Thank you,</p> <p>10 Mr. Krupanski. I am going to take chairman's</p> <p>11 prerogative and ask the first question and then I'll</p> <p>12 turn it over to my colleagues. Mr. Krupanski, do you --</p> <p>13 does the Boys and Girls Club receive money from the</p> <p>14 Joint Finance Committee?</p> <p>15 MR. GEORGE KRUPANSKI: Yes.</p> <p>16 REPRESENTATIVE VALIHURA: And how much is</p> <p>17 that, sir? Just in ballpark, I don't need an exact.</p> <p>18 MR. GEORGE KRUPANSKI: Probably about</p> <p>19 20,000.</p> <p>20 REPRESENTATIVE VALIHURA: \$20,000. Okay.</p> <p>21 Thank you. Senator.</p> <p>22 SENATOR PETERSON: You said that you think</p> <p>23 the Bill should have an amendment that would show that</p> <p>24 the organization had actual knowledge of the abuse. Do</p>	<p style="text-align: right;">Page 25</p> <p>1 burden of proof is on the accuser to prove that it</p> <p>2 happened, and not on the accused to prove that it</p> <p>3 didn't?</p> <p>4 MR. GEORGE KRUPANSKI: Yes, I realize that.</p> <p>5 SENATOR PETERSON: So if your records are</p> <p>6 gone, wouldn't that make it a whole lot harder for the</p> <p>7 accuser to get records that no longer exist?</p> <p>8 MR. GEORGE KRUPANSKI: Logically it would.</p> <p>9 And, as I understand, again, from our attorneys - which</p> <p>10 I understand attorney's role, the very nature of their</p> <p>11 role is to take different points of view - has advised</p> <p>12 us that this could make us liable.</p> <p>13 SENATOR PETERSON: Well, you just said that</p> <p>14 it should make you liable if you knew it was going on</p> <p>15 and didn't do anything about it.</p> <p>16 MR. GEORGE KRUPANSKI: Absolutely.</p> <p>17 SENATOR PETERSON: So you agree you should</p> <p>18 be liable in that case?</p> <p>19 MR. GEORGE KRUPANSKI: If someone knew that</p> <p>20 it was going on and the agency was aware, absolutely</p> <p>21 liable.</p> <p>22 SENATOR PETERSON: Okay.</p> <p>23 MR. GEORGE KRUPANSKI: Shut them up and</p> <p>24 close them down.</p>

7 (Pages 22 to 25)

<p style="text-align: right;">Page 26</p> <p>1 SENATOR PETERSON: Okay. Thank you.</p> <p>2 REPRESENTATIVE VALIHURA: Representative</p> <p>3 Hudson.</p> <p>4 REPRESENTATIVE HUDSON: Thank you. In your</p> <p>5 testimony I think you said something about having</p> <p>6 insurance. I think you said you do not?</p> <p>7 MR. GEORGE KRUPANSKI: We would not have</p> <p>8 insurance for sexual abuse going back 30, 40, 50 years</p> <p>9 ago. At that point in time insurance companies did not</p> <p>10 cover that.</p> <p>11 REPRESENTATIVE HUDSON: But you have it</p> <p>12 now?</p> <p>13 MR. GEORGE KRUPANSKI: Yes.</p> <p>14 REPRESENTATIVE HUDSON: And how long have</p> <p>15 you had it?</p> <p>16 MR. GEORGE KRUPANSKI: About the last 20</p> <p>17 years.</p> <p>18 REPRESENTATIVE HUDSON: Well, that's pretty</p> <p>19 good. I think you're covered for a 20-year period.</p> <p>20 That's excellent. Were you an original sponsor in the</p> <p>21 Child Victims Act, organization --</p> <p>22 MR. GEORGE KRUPANSKI: We supported it.</p> <p>23 REPRESENTATIVE HUDSON: And you withdrew</p> <p>24 because?</p>	<p style="text-align: right;">Page 28</p> <p>1 his or her opinion that you are exposed if something</p> <p>2 comes up in your past and you don't have any records on</p> <p>3 that?</p> <p>4 MR. GEORGE KRUPANSKI: They believe that</p> <p>5 the way the legislation is written - I can't remember</p> <p>6 the actual words - but provides enough questionable</p> <p>7 interpretation and just simply needs to be clearer.</p> <p>8 REPRESENTATIVE VALIHURA: Thank you very</p> <p>9 much. I am going to try -- well, Senator.</p> <p>10 SENATOR PETERSON: Mr. Krupanski, is your</p> <p>11 attorney here today so that they might explain what the</p> <p>12 ambiguity is here?</p> <p>13 MR. GEORGE KRUPANSKI: No, they're not.</p> <p>14 They were here last month - or last week and (inaudible</p> <p>15 to reporter).</p> <p>16 REPRESENTATIVE VALIHURA: Representative</p> <p>17 Marshall.</p> <p>18 REPRESENTATIVE MARSHALL: This is a</p> <p>19 question I'm not sure for you, Mr. Krupanski, or perhaps</p> <p>20 for the many attorneys that might be in the audience and</p> <p>21 it focuses on the actual definition of gross negligence,</p> <p>22 and Senator Peterson and I have had many conversations</p> <p>23 about this, I have talked with other attorneys about</p> <p>24 this, and part of where I'm getting hung up on is I hear</p>
<p style="text-align: right;">Page 27</p> <p>1 MR. GEORGE KRUPANSKI: Because of the</p> <p>2 advise of our attorneys saying be careful of what this</p> <p>3 could open us up to.</p> <p>4 REPRESENTATIVE HUDSON: Right. Well, I</p> <p>5 always think that it is important to read legislation,</p> <p>6 but I hope that you can understand what we're saying?</p> <p>7 MR. GEORGE KRUPANSKI: Absolutely.</p> <p>8 REPRESENTATIVE HUDSON: You would</p> <p>9 reconsider support for this. Thank very much for</p> <p>10 coming.</p> <p>11 REPRESENTATIVE VALIHURA: And</p> <p>12 Mr. Krupanski, you would support the legislation</p> <p>13 obviously if it excluded nonprofits in the look-back</p> <p>14 period, is that correct?</p> <p>15 MR. GEORGE KRUPANSKI: Actually, I think</p> <p>16 we'd support it if there was some firm look-back period,</p> <p>17 30, 40, 50 years even, but 75 years in our case that</p> <p>18 makes it difficult.</p> <p>19 REPRESENTATIVE VALIHURA: And your attorney</p> <p>20 is adamant about the liability that you may be exposed</p> <p>21 to under this -- first of all, your attorney read the</p> <p>22 legislation?</p> <p>23 MR. GEORGE KRUPANSKI: Yes.</p> <p>24 REPRESENTATIVE VALIHURA: Yes. And it is</p>	<p style="text-align: right;">Page 29</p> <p>1 what you're saying about that you think there should be</p> <p>2 liability in the event that there was actual knowledge,</p> <p>3 like let's say the former president was told, you know,</p> <p>4 the coaches -- coach X, Y and Z is abusing, saw it</p> <p>5 happen with their own eyes, whatever it might be, that</p> <p>6 they had actual knowledge and they just let it go.</p> <p>7 Okay, you're saying culpability, liability in that</p> <p>8 instance.</p> <p>9 Gross negligence, and this is the part</p> <p>10 that, again, I'm trying to focus in on, I guess is your</p> <p>11 concern then that the level right underneath of that</p> <p>12 would be, for example, if there were rumors out there</p> <p>13 that a coach was maybe inappropriately touching some of</p> <p>14 the children and that made its way up to the president</p> <p>15 and then the president did nothing about it. So</p> <p>16 technically the president didn't have any actual</p> <p>17 knowledge that there was abuse going on, there was just</p> <p>18 maybe some rumors going on out there, and of course</p> <p>19 since it happened 50 or 70 years ago the president is</p> <p>20 probably not even around to testify, is that the type of</p> <p>21 incident that you're concerned about might -- might</p> <p>22 happen that the law -- that would generate the lawsuit?</p> <p>23 MR. GEORGE KRUPANSKI: Yeah, I'm not an</p> <p>24 attorney, so I can't really describe the intent of what</p>

<p style="text-align: right;">Page 30</p> <p>1 gross negligence is. But in our case where we would    2 have no records of volunteers or coaches going back more    3 than 30 years ago, or situations where individuals have    4 come and gone -- our Board has completely turned over.    5 Our staff has completely turned over. I have got    6 nowhere to go to try to gather that information. And to    7 be very clear, I will be very adamant and work very hard    8 to find that information and dig that information up.    9 It's not a matter of saying oh, we just don't have it    10 because I'm going to take this very, very seriously, and    11 if there is just a thread out there that can help prove    12 that we were negligent if that were the case or not    13 negligent I am going to find it. But if it doesn't    14 exist it's going to be very, very difficult to do.</p> <p>15 REPRESENTATIVE MARSHALL: Okay. That    16 definitely helps me. I'll just try to just restate once    17 more, not for you but, again, for perhaps just the    18 audience of attorneys who might be here who might be    19 able to help clarify. Again, my understanding of gross    20 negligence is not as high as actual knowledge. So that    21 an organization such as yourself, if this law passes and    22 gross negligence were the standard, you would be able to    23 be found culpable, liable, if your president maybe heard    24 a rumor of something going on, did not have actual</p>	<p style="text-align: right;">Page 32</p> <p>1 know that there were clubs way back when, 25, 30, 40    2 years ago that when an incident came up their insurance    3 companies did not cover them even though they had    4 liability insurance.</p> <p>5 SENATOR PETERSON: Is that because    6 liability policies say if you commit a criminal act    7 you're not covered?</p> <p>8 MR. GEORGE KRUPANSKI: I don't know why.</p> <p>9 SENATOR PETERSON: Thank you.</p> <p>10 REPRESENTATIVE VALIHURA: I just want to    11 follow up the point made by Representative Marshall.    12 Another aspect of that, just so we're clear, is that    13 when is that gross negligence standard applied because    14 gross negligence in 2007 is quite different from gross    15 negligence in 1950, and what knowledge and what people    16 expected are different, and there is nothing you can do    17 to change that because we move forward as a society. So    18 it is a moving target so to speak.</p> <p>19 Any other questions of Mr. Krupanski? If    20 not, thank you very much. I appreciate your testimony    21 today.</p> <p>22 Tony Flynn, and following Tony will be Rita    23 Morocco.</p> <p>24 MR. TONY FLYNN: Thank you, Mr. Chairman.</p>
<p style="text-align: right;">Page 31</p> <p>1 knowledge, but then kind of like an ostrich sticks its    2 head in the sand, just kind of stuck his head in the    3 sand and said well, I know this rumor is out there but I    4 am going to stick my head in the sand and not ask any    5 questions so that I don't find out anything more about    6 it; if that's what gross negligence is then I would just    7 like that clarification if anyone can give that so that    8 I have a full understanding of what instances we might    9 be holding an institution such as yours liable for.    10 Thank you.</p> <p>11 REPRESENTATIVE VALIHURA: Yes, Senator.</p> <p>12 SENATOR PETERSON: I just have one more    13 question. You said in the last 20 years you have had    14 insurance cover these kinds of cases. Prior to that did    15 you have general liability coverage?</p> <p>16 MR. GEORGE KRUPANSKI: Yes.</p> <p>17 SENATOR PETERSON: And has somebody told    18 you that that would not cover?</p> <p>19 MR. GEORGE KRUPANSKI: I had -- not in this    20 particular case as it relates to Delaware. But prior to    21 then I have been working in Boys and Girls Club work for    22 34 years, had an opportunity to work in the regional    23 office of Boys and Girls Club of America national office    24 and with Boys and Girls Clubs around the country, I do</p>	<p style="text-align: right;">Page 33</p> <p>1 My name is Tony Flynn. I am the Diocesan attorney. My    2 fourth appearance before a committee of the General    3 Assembly to discuss the statute of limitations    4 applicable to child sexual abuse. I have to candidly    5 say I have been struggling to make the position of the    6 Diocese heard and understood.</p> <p>7 Let me first address the question that's    8 been raised by some as to whether the Diocese should say    9 anything about this issue. The church in Delaware, the    10 Diocese of Wilmington, the Catholic Church, will bear    11 the greatest impact of this legislation. Unfortunately    12 the church in this Diocese has a lot of experience in    13 dealing with abusers, their victims, and legal claims    14 relating to child sexual abuse, which is, of course, the    15 focus of Senate Bill 29, the access to the judicial    16 system for those claims. As an institution with the    17 largest exposure from this legislation, as a charitable    18 organization with an obligation to its faithful for    19 stewardship, as a charitable organization with a very    20 broad range of social services, religious and    21 educational ministries to support, and as the private    22 institution with the greatest obligation to victims of    23 child sexual abuse the church in this Diocese has an    24 obligation to speak and to explain itself on this issue.</p>

9 (Pages 30 to 33)

<p style="text-align: right;">Page 34</p> <p>1        The Diocese supports changing but not 2    eliminating the -- 3        (Whereupon Tape 1 Side 1 ended. The 4    following is Tape 1, Side 2:)</p> <p>5        MR. TONY FLYNN: -- respectively. The 6    Diocese supports enactment of a limitations period which 7    does not begin to run until a victim becomes an adult 8    and runs for long enough to account for the fact that 9    victims of child sexual abuse typically require a long, 10   long time, many years into their adulthood to come to 11   grips with their abuse. House substitute number 1 for 12   House Bill 450 which on this point passed both the House 13   and the Senate last year in the same form embodied this 14   concept, a limitations period of age and majority for 25 15   years. Now the rationale for such a limitation period 16   has been stated several times. The purpose of the 17   statutes, among other things, statute of limitations, 18   among other things, means to encourage victims to come 19   forward sooner rather than later, to enable legal claims 20   to be investigated and decided fairly while facts are 21   fresh, memories vivid and evidence available, and to 22   enable institutions to manage risk. Institutions, their 23   insurers, auditors and lenders all rely on the operation 24   of statutes of limitation in risk management insurance</p>	<p style="text-align: right;">Page 36</p> <p>1    enacted in 1983 in conjunction with the delayed 2    manifestation of personal injuries as a result of 3    exposure to Agent Orange during the Vietnam War. Under 4    that statute if personal injury claims then were barred 5    in 1983 by Delaware's two-year statute then there was a 6    six-month look-back period during which Agent Orange 7    victims could file suit.</p> <p>8        Unlike Senate Bill 29, however, this Agent 9    Orange look-back legislation did not permit lawsuits to 10   be filed regardless of when the injury occurred. During 11   the Agent Orange window injured soldiers could sue only 12   if they were exposed to the disfoliate between specified 13   dates, January 1, 1962 and May 7, 1975. As a result, 14   the Agent Orange look-back was limited to exposures that 15   were as recent to eight years before the legislation was 16   enacted and not older than 21 years. Thus the Agent 17   Orange legislation, unlike Senate Bill 29, guaranteed 18   that revived claims would be recent enough that 19   witnesses and other relevant evidence still would be 20   available. Now --</p> <p>21        REPRESENTATIVE VALIHURA: Mr. Flynn, isn't 22   it true that the reason why it was limited to that 23   period was that was our involvement in Vietnam during 24   that time? Rather than a particular time period that</p>
<p style="text-align: right;">Page 35</p> <p>1    and financial decisions.</p> <p>2        No limitations period, the complete 3    abolition of the statute of limitations, undermines 4    all these purposes.</p> <p>5        The Diocese does not support, therefore, 6    eliminating a limitations period going forward or going 7    backward and that is what Senate Bill 29 does.</p> <p>8        Now, I have previously discussed, and 9    others have, the problems with retroactively reviving 10   barred claims and I will not do so again. But if civil 11   litigation is seen -- about past abuse is seen as the 12   best, or, indeed, the premise of Senate Bill 29 the only 13   way to help victims then the due process -- I submit 14   that the due process concerns about the legislation can 15   be addressed. For example, limiting the backward reach 16   of the look-back period would help address concerns 17   about loss of evidence, unavailability of witnesses and 18   so forth.</p> <p>19        We have proposed limiting, not eliminating, 20   but limiting the look-back period to 20 to 22 years, 21   back to 1987. This would be consistent with Delaware's 22   criminal law which allows a sex offense dating back that 23   far still to be prosecuted. This would also be 24   consistent with Delaware's prior look-back legislation</p>	<p style="text-align: right;">Page 37</p> <p>1    was thought to be reasonable?</p> <p>2        MR. TONY FLYNN: Well, I would submit that 3    if the time period had been longer, if we were talking 4    about exposure during World War II, for example, or 5    other periods of time, the General Assembly might have 6    thought differently about completely eliminating or 7    having a look-back position that was 50 years or, but, 8    yes, certainly, that's the period of time when we were 9    there.</p> <p>10        REPRESENTATIVE VALIHURA: Thank you.</p> <p>11        MR. TONY FLYNN: Now this position of 12   limiting the look-back period has been viewed by some as 13   gutting the Bill. Now, prospectively an age of majority 14   plus 25 years limitations period would still be the 15   second longest statute of limitation among those states 16   who have taken such a fixed period of years approach to 17   child sex abuse claims. This approach would mean that 18   lawsuits still could be brought at least 28 years, and 19   perhaps as long as 40 years or more after the abuse 20   occurred. I submit that such an amendment hardly guts 21   the Bill. Retroactively, reviving barred claims from 22   more than 20 years ago would still be an extraordinary 23   thing. Only one other state has done something like 24   that.</p>

10 (Pages 34 to 37)

1 Now, I want to pick up on something  
 2 actually that Sister Maureen said, she pointed out that  
 3 the church -- correctly pointed out that the church has  
 4 a grave moral responsibility to victims of its priests.  
 5 That was absolutely true. So one may fairly ask if  
 6 we're proposing limiting the look-back period to 1987,  
 7 what about the victims before 1987. Just as Delaware's  
 8 current statute of limitations is no bar to any victim  
 9 coming to the Diocese of Wilmington for assistance, so,  
 10 too, will the Diocese, if asked, compensate victims  
 11 regardless of when they were abused by a priest prior to  
 12 1987 or whenever. The Diocese currently and for a long  
 13 time has paid for support, medical treatment, counseling  
 14 and other assistance to victims, and we have also paid  
 15 lump-sum settlements to victims who wanted compensation  
 16 in that manner.

17 So if the look-back period is amended to  
 18 address the due process concerns about an unlimited  
 19 period of looking backward, the victims still will be  
 20 able to look to the Diocese for help.

21 Now, I got to point out that the pendency  
 22 of House Bill 450 and Senate Bill 29 has kind of brought  
 23 that process to a halt understandably, but the Diocese  
 24 is still willing, interested and anxious to be able to

1 five since I have been doing it. I mean every claim  
 2 that has come to us during my tenure we have been able  
 3 to settle, and I don't blame -- I think the lawyers are  
 4 giving their clients good advice in this regard, by the  
 5 way, but that's the practical -- one practical  
 6 implication of the pendency of the Bill.

7 REPRESENTATIVE VALIHURA: Mr. Flynn, one of  
 8 the overriding themes that I have noticed in the public  
 9 discourse on this Bill has been the outing - I'll use  
 10 that word - of these folks who have engaged in this  
 11 behavior and bringing them to, quote, justice, in a way.  
 12 The -- either the voluntariness of these settlements  
 13 that you have engaged in, and they would be voluntary  
 14 before 1987, doesn't bring that to the fore and allow  
 15 the public to understand who or what and how long this  
 16 behavior engaged in -- was engaged in. How do you  
 17 address that aspect of the thoughts that these folks are  
 18 bringing to us?

19 MR. TONY FLYNN: As I previously have  
 20 testified, if disclosure of information is a fundamental  
 21 purpose of this Bill, which it is, I would suggest,  
 22 again, that the tort system is not the most efficient or  
 23 even an efficient way to get information out to the  
 24 public but there are other ways to do it. There are

1 reach out to the victims however it can.

2 REPRESENTATIVE VALIHURA: Mr. Flynn, I'm  
 3 not sure why it would be brought to a halt. You can  
 4 settle claims at any time, and, you know, get releases.  
 5 Why would you stop trying to settle them now if someone  
 6 brings them to your attention?

7 MR. TONY FLYNN: We're not trying, but it  
 8 takes two parties to reach a settlement and on I think  
 9 sound advice from their counsel victims aren't coming to  
 10 us because they're waiting to see what happens with your  
 11 Bill.

12 REPRESENTATIVE VALIHURA: Okay. So it's  
 13 not your --

14 MR. TONY FLYNN: Oh, no.

15 REPRESENTATIVE VALIHURA: You haven't  
 16 stopped offering this to folks?

17 MR. TONY FLYNN: No. And this --

18 REPRESENTATIVE VALIHURA: Representative  
 19 Hudson has a question.

20 REPRESENTATIVE HUDSON: I don't want to  
 21 miss this thought. How many times have you come to  
 22 agreement with a victim and given them a lump sum?

23 MR. TONY FLYNN: I couldn't tell you an  
 24 exact number. But I am going to say 15 settlements,

1 other ways in the form of mandatory reporting laws, for  
 2 example, where this information could be made public,  
 3 and Pennsylvania recently enacted a series of laws in  
 4 that regard. So there are other ways, I think better  
 5 ways I would submit, than a torts disposition --

6 REPRESENTATIVE VALIHURA: But I haven't  
 7 seen anyone propose that kind of publicly available  
 8 information. Your client has not done that. You know,  
 9 the press is here today, and thank you very much for  
 10 being here and covering this, but I think what I'm  
 11 hearing from folks, and I would ask anyone to disagree  
 12 with me on the panel here, is that there are -- that  
 13 people want to bring this out in the open. They want  
 14 daylight on these things. They want people to  
 15 understand what's been going on, who's been doing this,  
 16 and get that, you know, daylight on this. And the  
 17 voluntary settlements don't do that. And I guess part  
 18 of the reasons for having an unlimited look-back period  
 19 is to allow for that openness for all these claims. And  
 20 not so much -- I mean obviously a day in court is a good  
 21 thing for folks who want compensation for it, but it's  
 22 also, as you know as a trial lawyer, sir, press covers  
 23 that kind of thing, it's open forum, and allows for a  
 24 full explication of what went on.

1 I mean, I haven't seen anyone propose  
 2 anything that gives something more to the public than  
 3 what either we have this Bill or you suggesting we have  
 4 these private settlements.

5 MR. TONY FLYNN: No, I have suggested  
 6 before, I have suggested before that changes to  
 7 mandatory reporting laws, for example, are other ways to  
 8 more directly get information out. You're right, in a  
 9 one-on-one consensual negotiated settlement there is no  
 10 avenue for release of information. But I am only saying  
 11 that the tort system I think is an ill-suited way to do  
 12 it and there are other ways to do it, more direct ways.

13 REPRESENTATIVE VALIHURA: Thank you. Yes,  
 14 Representative Marshall.

15 REPRESENTATIVE MARSHALL: Mr. Flynn, I  
 16 didn't realize that the Diocese did engage in  
 17 settlements for cases that were from so long ago that  
 18 they could no longer be brought today. Could you help  
 19 me understand how that differs from if we were to have a  
 20 situation where these people now would formally be able  
 21 to go to court. I mean I know the settlement process,  
 22 95 percent of all cases generally settle anyways, how is  
 23 this going to change the church's practices as it  
 24 relates to settlements anyway?

1 MR. TONY FLYNN: It won't change the  
 2 church's practices, but with a 41 million dollar verdict  
 3 out here there is going to be no settlement of these  
 4 cases. There will be the expectation in every case of  
 5 not merely a seven-figure but an eight-figure recovery,  
 6 and the atmosphere for settling a case now is I think  
 7 just impractical.

8 REPRESENTATIVE MARSHALL: But you don't  
 9 think that the attorney that's -- and I don't mean this  
 10 as -- I'm saying this more rhetorically than anything,  
 11 if the person -- if the victim has a strong case then,  
 12 you know, they're going to go to court, and if you're  
 13 not going to settle for what they're asking for then  
 14 they go to court. But if they don't have a strong case  
 15 then their attorney will suggest to them that they  
 16 settle, and I'm just trying to, you know, ferret out  
 17 what exactly is going to happen as a result of, you  
 18 know, it sounds like you're paying settlements out  
 19 currently and I just am not sure how things are going to  
 20 change much if this Bill were to pass. If you're paying  
 21 out settlements currently and the Bill passes, the same  
 22 victims are out there, they would have either gone to  
 23 you before this Bill and asked for a settlement or now  
 24 that they have this Bill they have the opportunity to

1 air what happened to them and receive a court-ordered  
 2 settlement or a court-ordered award. I just am  
 3 struggling with seeing the big difference.

4 MR. TONY FLYNN: Well, I hope the dynamic  
 5 you suggest is present once the Bill passes. I have  
 6 grave doubts about it, however. But we'll certainly  
 7 try. I mean if the Bill passes in its current form  
 8 we're not going to do anything differently than we have  
 9 done before. We'll still certainly try to settle cases  
 10 even outside of the litigation context. But I think  
 11 we're going to have -- it's going to be very difficult  
 12 to do so. Simply as a practical matter of the  
 13 expectations and the good counsel that lawyers are give  
 14 to give their clients.

15 REPRESENTATIVE MARSHALL: I mean it might  
 16 be expectation but it may also be the actual value of  
 17 the injury, because presumably the court system and the  
 18 jury system, the judges and the appeals and all, when  
 19 all is said and done and a final award is determined,  
 20 that presumably in the marketplace is the value of  
 21 injury that occurred to that person and if that is  
 22 significantly higher than the amount that you would have  
 23 settled for, for example in the current situation where  
 24 people don't have access to lawsuits, what that suggests

1 to me is that maybe the amount that people are being  
 2 settled for right now is an undervalue of what sort of  
 3 if you were to even put a marketplace value on what  
 4 their injury would be. That's maybe what it suggests to  
 5 me.

6 MR. TONY FLYNN: Well, that's  
 7 unquestionably true. I mean, we're able to settle cases  
 8 now, we have a process for doing so. And the  
 9 settlements do not attempt to give a victim what a jury  
 10 is going to give them. It's attempted to make them  
 11 whole from a financial point of view, and though the  
 12 dynamic will change fundamentally when the Bill passes.  
 13 But we'll still try.

14 REPRESENTATIVE MARSHALL: Thank you.  
 15 REPRESENTATIVE VALIHURA: I think we're  
 16 going to go on with your presentation, please.

17 MR. TONY FLYNN: Well, just on the first  
 18 thing I am going to address here. The Diocese is not  
 19 looking for a pass on its obligations to victims of  
 20 sexual abuse at the hands of its priests. We're looking  
 21 for some recognition of the legal and practical problems  
 22 with simply abolishing the statute of limitations. It  
 23 seems to us that the concerns and needs of victim  
 24 claimants, of prospective institutional defendants and

<p style="text-align: center;">Page 46</p> <p>1 of our judicial system all can be addressed if there is 2 some reasonable balancing of these concerns and needs in 3 the form of some reasonable limitations period going 4 forward and backward.</p> <p>5 Now, I want to address the question of 6 impact of this legislation on ministry and particularly 7 in this Diocese, but before -- because it's been raised 8 at the last hearing, it was raised earlier this 9 afternoon, but I want to preface my remarks by saying 10 that Diocese of Wilmington has an obligation to those 11 victimized by clergy. It has an obligation to help them 12 heal, including by compensating them. And if 13 compensating them appropriately means a significant 14 financial burden on the Diocese, then so be it.</p> <p>15 The question of impacts on settlement that 16 I am going to address here and trying to explain what 17 that might be, I am not arguing that simply because of 18 that impact the Bill should be eliminated -- should be 19 amended so as to eliminate any impact. That's not what 20 I'm saying.</p> <p>21 Let me talk about one of the bankruptcy 22 cases and one of the large settlement cases and the 23 impact on ministry in those Dioceses. Spokane, 24 Washington has been one of the ones mentioned earlier as</p>	<p style="text-align: center;">Page 48</p> <p>1 million came from affiliated Catholic organizations and 2 ten million has to be raised by the parishes to come up 3 with this pot of money to be used for settling the 4 claim.</p> <p>5 The average amount of the settlement is -- 6 would be about \$270,000, but the range of settlements or 7 payments will be as low as \$15,000 to as high as 1.5 8 million, depending on the determination of the 9 arbitrator, but the average will be 270. There will 10 also be a future claimant's Representative operating for 11 the next 23 years to deal with claims that come up post 12 bankruptcy.</p> <p>13 Now to fund this, as I mentioned, every 14 asset of the Diocese had to be sold. The parish 15 services office at the Diocesan level was eliminated. 16 That supported youth ministry and religious education in 17 the parishes. A support role for parish administrators, 18 the Diocesan-wide Catholic conference was eliminated. 19 The Diocesan subsidy to Hispanic ministry in the Diocese 20 was eliminated, and Catholic Charities which was housed 21 in one of the buildings that was sold has to find new 22 quarters.</p> <p>23 Now, this is the Diocese of Spokane which 24 is a smaller Diocese than the Diocese of Wilmington and</p>
<p style="text-align: center;">Page 47</p> <p>1 a Diocese that went into bankruptcy. And the statement 2 was made earlier on the Senate side that as a result of 3 the settlement and the bankruptcies there has been no 4 closing of schools, no closing of churches, and no 5 impact on ministry. Now, so far as I can determine 6 there have been no schools or churches closed, but the 7 impact on ministry is undisputable. In Spokane, for 8 example, at the time of the filing of their case they 9 had 56 plaintiffs with cases pending and 19 trials, four 10 to six weeks each that were scheduled and about to 11 commence. As -- during the bankruptcy proceedings and 12 in anticipation of the settlement the direct employment 13 of the Diocese was cut in half, the formation of a new 14 diaconate class was delayed, and during the course of 15 the bankruptcy proceeding the number of claimants went 16 from 56 to about 200, of which about 176 have been 17 determined to be viable, and this is by an independent 18 process in accordance with that bankruptcy proceeding.</p> <p>19 The plan provides for a 48 million dollar 20 pot of money to be used to pay these claims according to 21 a specified procedure. About 20 million of that came 22 from insurance. 11 million of it came from the Diocese 23 and that 11 million was raised by the Diocese literally 24 just selling everything that it owned. Six and a half</p>	<p style="text-align: center;">Page 49</p> <p>1 had a lot of claims, 200 plus claims, including three -- 2 I'm sorry, about 100 that were attributable to just 3 three abusers. But the impact in that Diocese at least 4 was undeniable.</p> <p>5 Now, I could talk about the other 6 bankruptcies but I am going to move instead to one of 7 the large settlements, the Diocese of Orange, California 8 which settled for \$100 million with 87 victims, about 9 half to come from the Diocese and half to come from 10 insurance. The Diocesan share was funded entirely by a 11 borrowing with the Diocesan assets pledged as 12 collateral, and the impact there has been one on 13 ministry, reduction of staff in the pastoral center, end 14 of ministry resourcing for parishes at the Diocesan 15 level, reduced Diocesan subsidies to inner city schools 16 resulting in the merger of two schools.</p> <p>17 Now, is that going to happen here? It's 18 impossible to predict. I don't know how many cases 19 we're going to have. It was at an earlier hearing 20 suggested that we're not going to get too many. I don't 21 think that's the case. I think we're going to get quite 22 a few. And of course what we can resolve them for. But 23 as I have previously expressed, given the very limited 24 track record in this jurisdiction on these claims with</p>

13 (Pages 46 to 49)

<p style="text-align: right;">Page 50</p> <p>1 just a gargantuan verdict it's going to be very 2 difficult to settle these claims. 3 REPRESENTATIVE VALIHURA: Mr. Flynn, one of 4 the things that we hear down here from time to time in 5 the medical malpractice area in which one of the members 6 of your firm has been vigorous in support of is a 7 limitation on the amount of damages, 250,000 dollar 8 liability, and I note that in all the dialogue and over 9 the last three years that we have been discussing this, 10 that has never come up in any sort of discussion and I 11 find that kind of strange given the dialogue down here 12 on this limitation. Has that ever been discussed? Has 13 that ever been brought forward? Is there anything like 14 that out there?</p> <p>15 MR. TONY FLYNN: A limitation on recovery? 16 REPRESENTATIVE VALIHURA: Yes. 17 MR. TONY FLYNN: Well, there was actually 18 an amendment introduced to House Bill 450 last year that 19 would have provided a cap \$225,000 on recovery, yes. 20 Not proposed by us but -- 21 REPRESENTATIVE VALIHURA: Well, have you 22 surfaced that? Have you been out there discussing that? 23 I mean, you seem to be trying to take a complete 24 limitation on it and it strikes me as that you could</p>	<p style="text-align: right;">Page 52</p> <p>1 proposing anything. I'm throwing this out as I 2 mentioned in the last hearing and there are two lawyers 3 on this committee and we tend to throw things out in 4 legal concepts and this one just, you know, strikes me 5 as one that, you know, if you're going to change this 6 look-back period why don't you say okay, for claims 7 further back we're going to put a limitation of 8 liability because we can't, you know, know what they are 9 but we're going to still have your opportunity to have 10 your day in court.</p> <p>11 MR. TONY FLYNN: That would certainly be 12 one way to help moderate the impact of it and I am going 13 to talk about insurance, so maybe that's something that 14 would explain what the limitation is from our 15 perspective of what there is available for that. So I 16 am certainly open to discussing that as a possible way 17 to address the concerns but I'm not here to propose such 18 a cap.</p> <p>19 REPRESENTATIVE VALIHURA: Thank you. 20 MR. TONY FLYNN: Now, the Diocese of 21 Wilmington provides annually a little over five million 22 dollars in outlays to subsidize ministry. It has 23 previously been mentioned correctly that Catholic Social 24 Services -- I'm sorry, Catholic Charity, formerly</p>
<p style="text-align: right;">Page 51</p> <p>1 sort of get it both ways here if you sort of limit what 2 the liability might be versus especially since we now 3 just talked about these huge verdicts where you're 4 creating havoc and, you know, I'm all in favor of 5 punitive damages, I would never vote to get rid of that 6 because I think at some point, you know, you need that 7 kind of hammer, but punitive damages and the successive 8 for the same behavior by the same individual seems to be 9 -- it gets to a different level in my mind, and punitive 10 damages going out to one individual as opposed to being 11 shared by other people who were hurt are troubling. But 12 I just -- there seems to be no dialogue on that and I'm 13 curious as to why the church hasn't, you know, surfaced 14 that kind of discussion.</p> <p>15 MR. TONY FLYNN: Well, I have engaged in no 16 discussion about proposing such a cap and I got to tell 17 you that I'd be very reluctant from the church's point 18 of view to be proposing a cap on damages for the victim. 19 It seems to me that what we're proposing is open access 20 to the court system back to a certain date and before 21 that we will continue to try to deal with victims on a 22 settlement basis.</p> <p>23 REPRESENTATIVE VALIHURA: I understand 24 that. I'm not proposing a cap on future. I'm not even</p>	<p style="text-align: right;">Page 53</p> <p>1 Catholic Social Services, it's a primary arm of the 2 Diocese to provides things like adoption services, AIDS 3 ministry, counseling, substance abuse assistance and 4 that sort of thing and that that agency gets about 70 5 percent, 73 percent in the current year of its funding 6 from government sources, but it gets about a million and 7 two from the Diocese of Wilmington, that's one direct 8 subsidy of social services at least that at the Diocese 9 level is provided. In addition, the Diocese provides 10 subsidies for parish ministries of about 1.2 million 11 dollars, most of which is in the form of support for 12 parish schools. 24 parishes get these subsidies, 13 including seven in the City of Wilmington.</p> <p>14 Beyond that the Diocese provides employee 15 benefits supports for all qualifying parish school and 16 other corporation employees of about 1.3 million 17 dollars. All, at least potentially, would be impacted 18 if money is diverted for settling with victims. And I 19 want to express again that the Diocese does already, and 20 is willing and anxious to do so in the future, divert 21 such money for those purposes.</p> <p>22 Well, how can we manage this in this 23 Diocese? And it has been suggested that the Diocese or 24 the church is heavily insured. Let me just say that for</p>

14 (Pages 50 to 53)

<p style="text-align: center;">Page 54</p> <p>1 the Diocese we only have policies dating back to 1978.    2 There is evidence of coverage further back, and of    3 course further back is where the vast majority of our    4 victims are. The limit of the coverage that we do have    5 is a half a million dollars per occurrence with some    6 excess coverage in certain years of a million and up to    7 two million in certain years. If we go back further, if    8 we do find these policies that we have some evidence of,    9 you're talking about very low levels of -- or limits of    10 coverage. Typically 50,000 to 100 -- \$50,000 per    11 occurrence, \$100,000 in aggregate, going up in some    12 degree in the 1970s. But even if paid in 1960's or    13 1970's dollars that's not going to go very far towards    14 settlement.</p> <p>15 So then it's suggested that between this    16 insurance availability and the sale of excess property    17 there will be no problem. They can raise sufficient    18 money. And it's certainly true the Diocese holds    19 property for future use, for future parishes and    20 schools. The Diocese has held property for a long time    21 that it then provides to a parish, either to create a    22 new parish. For example in Glasgow within the last ten    23 years a mission church down in Sussex County, schools --    24 a school in New Castle County and other uses of a</p>	<p style="text-align: center;">Page 56</p> <p>1 continue to provide services at their current level.    2 Now, you may --    3 REPRESENTATIVE VALIHURA: Mr. Flynn, you    4 made a statement earlier on in your presentation and    5 then you just made one moments ago about the vast    6 majority of your claims are before 1987. You opened the    7 door and I am going to ask you how many claims do you    8 have after -- prior to 1987 that you're aware of right    9 now?</p> <p>10 MR. TONY FLYNN: I want to be clear about    11 claims versus --    12 REPRESENTATIVE VALIHURA: Well, I mean you    13 used the terminology. Whatever you were intended by    14 your comment.</p> <p>15 MR. TONY FLYNN: What I said was that prior    16 to 1978 I think it was.</p> <p>17 REPRESENTATIVE VALIHURA: I'm sorry. You    18 did say 1978.</p> <p>19 MR. TONY FLYNN: Is where most of our    20 victims are, and I do have this information in precise    21 form, but let me say generally speaking that I want to    22 say we're aware of reports about 40 some number like    23 that.</p> <p>24 REPRESENTATIVE VALIHURA: I'm sorry, 40?</p>
<p style="text-align: center;">Page 55</p> <p>1 similar nature. And, yes, this property could be sold    2 for other purposes, including settlements with victims.    3 But the money does go for other purposes.    4 The -- for example, Sienna Hall in Wilmington was    5 recently sold, a million dollars of the proceeds of that    6 sale are going to subsidize tuition for lower income    7 students to attend parochial schools.</p> <p>8 Now, I want to say that it may well be    9 appropriate that this property needs to be sold for the    10 purpose we're talking about today, but if the Diocese    11 simply sells all its property that it owns where is the    12 future of the ministry of the church? Where will the    13 future Christ of Teacher School be built or the Most    14 Blessed Sacrament School be built? Where will the    15 future parishes come from? And, in any event, I mean    16 how many eight-figure settlements are we going to be    17 able to subsidize or pay for through the sale of    18 property? I don't know.</p> <p>19 Again, I want to repeat, the church owes    20 its victims and has an obligation to dedicate sufficient    21 resources to compensate them appropriately, but it seems    22 to me undeniable - and I think the experience elsewhere    23 demonstrates this - that legislation -- this legislation    24 or settlement will affect the ability of the Diocese to</p>	<p style="text-align: center;">Page 57</p> <p>1 MR. TONY FLYNN: 4-0, but I can give you a    2 more precise numbers if that --    3 REPRESENTATIVE VALIHURA: That's really    4 what I was looking for, a ballpark.    5 MR. TONY FLYNN: And your next question    6 might have been, well, what's post 1978.    7 REPRESENTATIVE VALIHURA: Very good.    8 That's . . .    9 MR. TONY FLYNN: And fewer, but I am going    10 to say 15 or some number like that. One of the things    11 learned from the experience elsewhere, however, in    12 California in particular where they have the window, is    13 that you don't know, you just don't know until the law    14 is passed, until the window is open, until in a    15 bankruptcy you have a bar date. Spokane got double the    16 number of victims that it thought were out there.    17 That's what I'm expecting. I'm expecting that we're    18 going to have more than we know about and they will be    19 across the spectrum but certainly more heavily weighted    20 I believe to the 70s or even 1960s.    21 REPRESENTATIVE VALIHURA: Let me ask this    22 because I really hadn't thought about it, but most of    23 the folks here in Delaware know what's going on, and we    24 have a very transient population now, I think everyone</p>

15 (Pages 54 to 57)

<p style="text-align: right;">Page 58</p> <p>1 in this room would agree. This legislation would open 2 it up for anybody who was victimized in Delaware by, for 3 example, the church, and I'm not picking on you I just 4 happen to have you in front of us, and so if that person 5 was living in Idaho now, he or she could come back here 6 and file that claim under this legislation, is that 7 correct?</p> <p>8 MR. TONY FLYNN: Yes.</p> <p>9 REPRESENTATIVE VALIHURA: Okay. And you 10 wouldn't necessarily know about that person today 11 because they probably haven't contacted you and probably 12 don't even know what's going on.</p> <p>13 MR. TONY FLYNN: We certainly have heard 14 from some victims that are not currently in Delaware, 15 but I'm quite sure there are victims we have not heard 16 from. I'm absolutely certain of that.</p> <p>17 REPRESENTATIVE VALIHURA: Thank you.</p> <p>18 MR. TONY FLYNN: Let me just conclude by 19 saying that you -- the General Assembly may conclude 20 that regardless of the potential impact of the 21 legislation it should be enacted without any amendment 22 balancing the needs and concerns of all the parties 23 affected by the Bill. But do so, please, with your eyes 24 open to the consequences of the legislation. This will</p>	<p style="text-align: right;">Page 60</p> <p>1 going to be an intro into our Safe Environments Program. 2 Now, we are by no means the only institutions to do what 3 is being done, but Sister Maureen, again, testified 4 earlier about the program that we have. That is -- that 5 is the way to prevent abuse. And of course this 6 legislation I think overridingly really is to prevent 7 abuse and there are several ways to do that, but the one 8 way certainly to do it is to train people, to do 9 background checks, to educate children and parents, 10 teachers and volunteers, to screen people, and all those 11 things are being done within the Diocese, and that is 12 what Doug was going to talk about and Sister Suzanne 13 also was going to talk about, and I'm not going to get 14 into the details of what they would have said.</p> <p>15 REPRESENTATIVE VALIHURA: Representative 16 Hudson.</p> <p>17 REPRESENTATIVE HUDSON: Since they're not 18 there maybe you can tell us when those programs began?</p> <p>19 MR. TONY FLYNN: I can't. Following the 20 adoption in I want to say 1994 by the National 21 Conference of Catholic Bishops of a five point program 22 for dealing with sexual abuse, the Diocese of Wilmington 23 adopted a sexual abuse policy established - it wasn't 24 called a review Board, I forget what it was called at</p>
<p style="text-align: right;">Page 59</p> <p>1 not be and cannot be a cost-free exercise entirely paid 2 for by insurance or the sale of surplus property. I 3 mean, you simply cannot take tens or scores of millions 4 of dollars out of any charitable institution and have no 5 effect on the mission of that institution.</p> <p>6 I want to mention as I conclude that there 7 were two other witnesses who were present on May 10th 8 who were with me to testify, Sister Suzanne Donovan who 9 is the HR for the Diocese and the co-chair of our Safe 10 Environments Program and Doug Salter, a retired State 11 Policeman who is the other co-chair of the Safe 12 Environments Program, neither of whom were able to be 13 here today or to talk about our program.</p> <p>14 REPRESENTATIVE VALIHURA: What -- and could 15 you just summarize what they were prepared to say. 16 Mr. Flynn?</p> <p>17 MR. TONY FLYNN: Yeah, well --</p> <p>18 REPRESENTATIVE VALIHURA: I assume you knew 19 what they were going to testify to.</p> <p>20 MR. TONY FLYNN: Doug Salter was going to 21 testify about his experience as a state trooper in 22 dealing particularly with child abuse claims and the 23 difficulty of the cases from an evidentiary perspective 24 including on the older the case is. He was then also</p>	<p style="text-align: right;">Page 61</p> <p>1 that time - and then following the adoption of the 2 charter in 2002 which had much more detail with respect 3 to what these programs should require the Diocese 4 initiated what is called For the Sake of God's Children 5 Program, which includes a criminal background check, the 6 establishment of the review panel, ethical standards 7 which document volunteer compliance with both training 8 and acknowledgment of their obligations with respect to 9 safe environments, and so that's when it was.</p> <p>10 REPRESENTATIVE HUDSON: But it didn't 11 affect sending the one priest to Syracuse and it didn't 12 really affect you taking enablers out of schools. So it 13 is a policy on paper that isn't -- doesn't seem to be 14 valid to many of the people in this room.</p> <p>15 MR. TONY FLYNN: Well, I'm not sure about 16 the latter that you referred to, taking enablers out of 17 school, but with respect to Father DeLuca who did move 18 to Syracuse following his removal from ministry in 1993, 19 that did occur, and following 2002 when a review of all 20 the files was done there were an additional three 21 pastors removed from ministry at that time.</p> <p>22 REPRESENTATIVE HUDSON: So that wasn't part 23 of your policy?</p> <p>24 MR. TONY FLYNN: It was. Father DeLuca was</p>

16 (Pages 58 to 61)

<p style="text-align: center;">Page 62</p> <p>1 removed from ministry in 1993 based on an allegation of 2 sexual abuse prior to the adoption of the policy in that 3 regard, and he wasn't the first.</p> <p>4 REPRESENTATIVE VALIHURA: Senator.</p> <p>5 SENATOR PETERSON: Was that the first 6 allegations that was brought to the fore about Francis 7 DeLuca, the one that put him in retirement?</p> <p>8 MR. TONY FLYNN: Actually it was in this 9 sense. What happened was that another victim reported 10 to the Diocese that a friend of theirs had been abused 11 by Father DeLuca and that that allegation had been 12 brought forward in 1966, some date then. So it was the 13 same allegation but it was renewed or made known in 14 1993.</p> <p>15 SENATOR PETERSON: Because I can tell you 16 that I was a student at St. Elizabeth's High School in 17 the 1960s when Father Francis DeLuca was there and it 18 was pretty common knowledge that he was abusing young 19 boys. In fact, that's why he was moved from St. 20 Elizabeth's over to Holy Spirit. Having been moved to 21 Holy Spirit I wonder how many of those victims I haven't 22 heard from because I have heard from at least six of the 23 victims at this point.</p> <p>24 I have a couple questions. Do you want to</p>	<p style="text-align: center;">Page 64</p> <p>1 SENATOR PETERSON: Yeah, but my point was 2 you're aware of the fact that this legislature 3 unanimously passed a Bill attempting to go back as far 4 as we could?</p> <p>5 MR. TONY FLYNN: I am, but that it couldn't 6 be done because of due process.</p> <p>7 SENATOR PETERSON: Because that goes back 8 to (inaudible to reporter) consideration. But the same 9 is not true in criminal -- I mean in civil cases?</p> <p>10 MR. TONY FLYNN: It is. It is. It's 11 simply a different analysis. This legislation, as I 12 have previously said at the first hearing, and as the 13 State solicitor said at the Senate hearing, under 14 Delaware's Constitution, unlike those of Maryland, for 15 example, or Missouri or Illinois, that you can 16 retroactively revive barred claims but that leaves then 17 the analysis to a case-by-case scrutiny as to whether in 18 a given case you go too far back, if you go back 50 19 years and there is no witness and no evidence, then as 20 applied in that particular case the statute may be 21 (inaudible to reporter).</p> <p>22 SENATOR PETERSON: So for the two-year 23 look-back period people might have to argue the due 24 process arguments for that two-year period?</p>
<p style="text-align: center;">Page 63</p> <p>1 hear some more?</p> <p>2 MR. TONY FLYNN: Absolutely.</p> <p>3 SENATOR PETERSON: A couple of things. The 4 criminal statute of limitations you said goes back to 5 '87 and this law should do the same. Are you aware of 6 the fact that House Bill 66 that both Houses unanimously 7 passed and approved statute of limitations retroactively 8 and the Supreme Court said you can't do that in 9 criminal?</p> <p>10 MR. TONY FLYNN: I am.</p> <p>11 SENATOR PETERSON: So why did you pick that 12 date?</p> <p>13 MR. TONY FLYNN: Well, because one reason 14 why -- what the Supreme Court did in the Stagner case 15 which invalidated that portion of Senate Bill 66 was 16 from a due process concern. You can't go back and 17 retroactively revive criminal complaints. But the 18 result was left in place what our statute was at the 19 time in 1992 when it had been previously changed which 20 is how do you get back to 1987? And my only point is if 21 we can -- if we can, consistent with due process 22 requirements, criminally prosecute someone back that far 23 it seems to me that would be an appropriate day that you 24 can also sue someone back that far.</p>	<p style="text-align: center;">Page 65</p> <p>1 MR. TONY FLYNN: Yeah.</p> <p>2 SENATOR PETERSON: Beyond that, those 3 arguments go away for future cases?</p> <p>4 MR. TONY FLYNN: Yeah, for future cases, 5 that's correct.</p> <p>6 SENATOR PETERSON: All right. You said 7 that you think the look-back period is 21 years or 20 8 years, going back to 1987. But conceivably going 9 forward cases could be 43 years old before they're ever 10 brought?</p> <p>11 MR. TONY FLYNN: Right.</p> <p>12 SENATOR PETERSON: Because you're looking 13 at age 43, that's what you're looking at, and in the one 14 case of Father Oliver O'Grady, by his own admission his 15 youngest victim was a nine-month old girl that he raped, 16 so conceivably 43 years out. So what I'm trying to 17 figure out if it's not a good idea to go more than 21 18 years back why 43 years from now would you allow people 19 to go 43 years back?</p> <p>20 MR. TONY FLYNN: Because you have a lot 21 more flexibility going forward because everyone is on 22 notice as to what the requirements are and it's now 23 absolute practice. I mean recordkeeping is going to be 24 pristine. Training programs in place to prevent. So</p>

17 (Pages 62 to 65)

<p style="text-align: center;">Page 66</p> <p>1 going forward it seems to me there is a lot more 2 latitude in having a longer statute of limitations. 3 SENATOR PETERSON: So you don't think that 4 going back that people have thought this was important 5 enough to keep records about their employees molesting 6 kids? I mean what part of the brain was shut down where 7 somebody would say this isn't important, I'll just throw 8 this note in the trash?</p> <p>9 MR. TONY FLYNN: I think it's not a 10 question of whether it was important or not. But two 11 problems: One is back then simply documenting what had 12 occurred, there just wasn't as a general proposition the 13 practice in place to do so. And, secondly, you lose 14 records over time. You go back 30 or 40 years and you 15 just don't -- you're not going to have the same records 16 as you do now.</p> <p>17 SENATOR PETERSON: Does the church dispose 18 of its records?</p> <p>19 MR. TONY FLYNN: I can't answer that as a 20 general proposition. I can only say --</p> <p>21 REPRESENTATIVE VALIHURA: I guess the 22 question is do they have a record retention policy?</p> <p>23 SENATOR PETERSON: Or do they have --</p> <p>24 REPRESENTATIVE VALIHURA: I'm sure with a</p>	<p style="text-align: center;">Page 68</p> <p>1 people will keep good records from now on because they 2 could be liable?</p> <p>3 MR. TONY FLYNN: Yes.</p> <p>4 SENATOR PETERSON: So it's not about the 5 kids, it's about the money?</p> <p>6 MR. TONY FLYNN: Absolutely incorrect. I 7 completely disagree with that. The purpose -- our job, 8 and Mr. Krupanski testified to that, is to prevent abuse 9 going forward. And simply because we're keeping good 10 records about that and training people does not mean 11 that we are not about taking care of kids going forward, 12 protecting kids going forward.</p> <p>13 SENATOR PETERSON: Well, if that's the case 14 why --</p> <p>15 MR. TONY FLYNN: And this law, the Bill is 16 designed to set up legal liability. That's what the 17 Bill is about.</p> <p>18 SENATOR PETERSON: I understand what the 19 Bill is about.</p> <p>20 MR. TONY FLYNN: Uh-huh. I know.</p> <p>21 SENATOR PETERSON: My point was you didn't 22 think it was important to keep records when it was kids 23 being molested, but now you're going to keep records 24 because you could be on the hook for the kids being</p>
<p style="text-align: center;">Page 67</p> <p>1 fine lawyer like yourself you have discussed a record 2 retention policy with the church.</p> <p>3 MR. TONY FLYNN: Let me assure you that on 4 my watch, no records have been disposed of or destroyed 5 on my watch.</p> <p>6 SENATOR PETERSON: And how long is your 7 watch?</p> <p>8 MR. TONY FLYNN: Only since 2000 -- it was 9 Easter week of 2002.</p> <p>10 SENATOR PETERSON: Father Tom Doyle 11 testified before the Senate and told us that by canon 12 law the church's records cannot be destroyed, that there 13 are, in fact, secret archives but that those records 14 exist somewhere. Do you disagree? Father Tom Doyle 15 will be back to address that before the House again.</p> <p>16 MR. TONY FLYNN: Yeah. Actually what he 17 said was the church is the best record keeper of any 18 organization in the world or something to that effect. 19 He didn't cite specific canon law provisions, but yes, 20 there are records maintained, but the question is what 21 is in the records in the first place to be maintained, 22 and that's what I'm telling you, that you go back that 23 far you're just not going to find much.</p> <p>24 SENATOR PETERSON: So your point is that</p>	<p style="text-align: center;">Page 69</p> <p>1 molested. So the only difference is now there might be 2 some money involved where before there wasn't --</p> <p>3 MR. TONY FLYNN: I completely reject that 4 sort of a question, Senator.</p> <p>5 SENATOR PETERSON: Tell me why.</p> <p>6 MR. TONY FLYNN: Because the purpose for 7 keeping good records, which doesn't begin with the 8 enactment of this legislation - the Diocese has been 9 keeping good records, again, at least as far as I know 10 back to 2003 and I would say back to 1995 - in any event 11 have nothing to do with the legal liability of the 12 church.</p> <p>13 SENATOR PETERSON: Let's move on from that.</p> <p>14 REPRESENTATIVE VALIHURA: Well, Senator, 15 can I just, I don't want to interrupt you but there is 16 another member of the committee would like to ask some 17 questions and then we'll get back to you, how is that?</p> <p>18 SENATOR PETERSON: Okay.</p> <p>19 REPRESENTATIVE VALIHURA: Representative 20 Lavelle. Oh, no, no. I thought you were just looking 21 at me and making a point.</p> <p>22 REPRESENTATIVE LAVELLE: Thank you.</p> <p>23 Mr. Flynn, do you know what the current State policy is 24 on volunteers in our schools and other places? Do they</p>

18 (Pages 66 to 69)

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<p>1 require criminal background checks before when someone  2 is allowed to set into a school and become a PTA  3 volunteer or go on a field trip or anything like that?</p> <p>4 MR. TONY FLYNN: I have to say I'm not  5 aware. How is that?</p> <p>6 REPRESENTATIVE LAVELLE: Okay. Do you know  7 what State programs are in place if a victim of child --  8 if an alleged, if an allegation was made against a State  9 employee, what policies the State of Delaware may have  10 in place to provide counseling or welcome them in, try  11 to find them help?</p> <p>12 MR. TONY FLYNN: I am not.</p> <p>13 REPRESENTATIVE LAVELLE: I'm not either.  14 I'm a parent of a child who goes to public school and a  15 private school, a parochial school. For the parochial  16 school I can't go on a field trip because I haven't had  17 a criminal background check yet. For the public school,  18 as far as I know, I can go on a field trip tomorrow.  19 There is no policy to document, to make reasonable steps  20 to protect our children. And my point for bringing this  21 up, as everyone knows in this room, goes around back to  22 amendment number two and we should make sure that all  23 those things are done the same.</p> <p>24 Senator, with respect to the records - and</p>	<p>1 become a volunteer, an active volunteer in the sense  2 that she could go to the zoo or whatever and walk around  3 with the kids. So --</p> <p>4 (Whereupon Tape 1, side 2 concluded. The  5 following is Tape 2, Side 1:)</p> <p>6 REPRESENTATIVE LAVELLE: -- been deficient  7 too many times. I would suggest to you the State has  8 also been deficient on a number of occasions and that we  9 should all work towards a solution that protects all the  10 children and put those policies and procedures in place  11 that need to be put in place.</p> <p>12 REPRESENTATIVE VALIHURA: Thank you.  13 Representative Hudson.</p> <p>14 REPRESENTATIVE HUDSON: Thank you. Do you  15 support this Bill? Does your client, you're here as a  16 lawyer representing the Catholic Diocese?</p> <p>17 MR. TONY FLYNN: Right, as amended.</p> <p>18 REPRESENTATIVE HUDSON: Do you support --</p> <p>19 MR. TONY FLYNN: Yes, we would.</p> <p>20 REPRESENTATIVE HUDSON: As amended. All  21 right. Did you write the amendment?</p> <p>22 MR. TONY FLYNN: Which amendment is that?</p> <p>23 REPRESENTATIVE HUDSON: The first one --</p> <p>24 MR. TONY FLYNN: I wrote three amendments:</p>
Page 71	Page 73
<p>1 I'm not here to defend the church, I think what the  2 church has done in all these cases is reprehensible.  3 When Cardinal Law got a promotion to Rome I was  4 disgusted, and that's the most polite word I can use in  5 this hall about that activity. But everyone should be  6 treated the same here in terms of protecting our  7 children. And my point in bringing it up was I believe  8 in the Diandra Simms case, a lawsuit against a  9 Christiana School District employee for sexually abusing  10 a special needs child, those records were lost. This  11 wasn't 1965 records or '87 records. These were records  12 from ten years ago. Somehow they were lost.</p> <p>13 So as we go through this, let's -- I do not  14 want this committee, I do not want this body, I do not  15 want this legislative building to lose track of making  16 sure that everyone is on the same playing field. It  17 does happen, it has happened and it will happen again.  18 And the State perhaps needs to, or our school districts  19 perhaps needs to look, as has come out in this debate  20 today, at their policies and procedures for people who  21 walk in those buildings today, and what's being done to  22 make reasonable steps, costly steps, because as a  23 parent, I believe - and my wife went through this - she  24 had to pay the 20 bucks, 50 bucks or whatever it was to</p>	<p>1 One dealing with the look-back provision, one dealing  2 with the prospective limitation, and one on actual  3 knowledge.</p> <p>4 REPRESENTATIVE HUDSON: Well, we have one  5 file that I believe is going to be stricken. House  6 Amendment 1, did you write that one?</p> <p>7 MR. TONY FLYNN: I did not.</p> <p>8 REPRESENTATIVE HUDSON: Did you write House  9 Amendment Number 2 that is currently a part of the Bill?</p> <p>10 MR. TONY FLYNN: No, but it is based on  11 something I did write. Last year -- this was my issue  12 last year, one of my issues last year, was the public  13 immunity question, and in that context I did write an  14 amendment to the House Bill 450, and that language found  15 its way in to the substitute Bill and when I saw House  16 Amendment 1 to me it did not accomplish what House  17 substitute 1 was intended to accomplish last year and I  18 informed Representative Lavelle of that, and the  19 language which I drafted last year was incorporated into  20 House Amendment Number 2.</p> <p>21 REPRESENTATIVE HUDSON: Well, when you  22 first --</p> <p>23 REPRESENTATIVE VALIHURA: Well, can I just  24 -- I mean we have had a lot of discussion about House</p>

19 (Pages 70 to 73)

<p style="text-align: center;">Page 74</p> <p>1 Amendment 1 and House Amendment 2 and it's -- I think    2 it's -- it's unfortunate but Representative Lavelle did    3 not do the final approval on House Amendment Number 1,    4 never intended to file House Amendment Number 1, it got    5 filed, he struck it as soon -- well, he will strike it,    6 I assume he will strike it. It is unfortunate, but it    7 is -- it was Representative Lavelle's intention, I don't    8 want to put words in your mouth but I mean, I just, I    9 have heard a lot about this and I just I want it clear    10 for the folks out there that House Amendment Number 2    11 was the intended vehicle by which Representative Lavelle    12 was going to bring forward the issue.</p> <p>13 REPRESENTATIVE HUDSON: That's good    14 clarification but that wasn't where I was going.</p> <p>15 REPRESENTATIVE VALIHURA: I understand    16 that, but I wanted it out there because it needed to be    17 said.</p> <p>18 REPRESENTATIVE HUDSON: Thank you. In the    19 very beginning when you stood up here you said that the    20 Catholic Church perhaps has a lot to lose in this field    21 or has a lot of experience. So I find it interesting    22 that you would be the one, the Catholic Diocese would be    23 the one trying to amend the Bill, and that you would be    24 writing it, and I know our house attorney had to contact</p>	<p style="text-align: center;">Page 76</p> <p>1 REPRESENTATIVE HUDSON: -- a lawsuit or    2 anything?</p> <p>3 MR. TONY FLYNN: No.</p> <p>4 REPRESENTATIVE HUDSON: It was just perhaps    5 that students were going to public school, or it wasn't    6 a priority or there wasn't -- it was just a run of the    7 mill --</p> <p>8 REPRESENTATIVE VALIHURA: I believe it's    9 population shift more than anything else.</p> <p>10 REPRESENTATIVE HUDSON: A run of the mill    11 decision that you closed schools in Wilmington?</p> <p>12 MR. TONY FLYNN: Well, I can't answer that.    13 I can tell you it didn't have anything to do with the    14 settlement.</p> <p>15 REPRESENTATIVE HUDSON: Right. I think    16 that's what I wanted -- that's for the moment, thank    17 you.</p> <p>18 REPRESENTATIVE VALIHURA: Representative    19 Kowalko first.</p> <p>20 REPRESENTATIVE KOWALKO: Thank you.</p> <p>21 REPRESENTATIVE VALIHURA: John, can you    22 pull the speaker down?</p> <p>23 REPRESENTATIVE KOWALKO: Two points here,    24 the Spokane bankruptcy, if it caused a doubling of</p>
<p style="text-align: center;">Page 75</p> <p>1 one of your attorneys to make sure that House Amendment    2 Number 2 was written better than Number 1. So we are    3 checking in with the Diocese on amendments and I find    4 that a little bit awkward, although in many cases that    5 happens all the time. But it just is awkward. Just    6 like to me it's awkward that you would arbitrarily pick    7 1987 as where you wouldn't want any cases filed beyond    8 that and yet you say you have perhaps 40 cases going    9 back to 1978. So it looks, again, like perhaps you're    10 trying to protect something and I just find that    11 scrambling this Bill is not in the best interests of    12 victims and rather - although you're standing here in    13 front of everyone openly talking about it and I respect    14 your job as a lawyer - but it's awkward and it gives me    15 pause as one who is trying to figure out what's the best    16 part of this Bill.</p> <p>17 Let me change the subject a little bit and    18 go back to when the Catholic Diocese closed some schools    19 earlier this year. Why was that?</p> <p>20 MR. TONY FLYNN: You're outside of my    21 territory of knowledge. I can't say. I don't know.</p> <p>22 REPRESENTATIVE HUDSON: But it wasn't an    23 abuse case that --</p> <p>24 MR. TONY FLYNN: Oh, no.</p>	<p style="text-align: center;">Page 77</p> <p>1 victim claims and the victim claims were legitimate,    2 that seems to be a good consequence of this type of    3 legislation. And if this type of legislation as written    4 is passed in Delaware and it precipitates a legitimate    5 increase in claims and proved an increased number of    6 grossly negligent actions by the Diocese that is the    7 point of the Bill. And no matter what good an entity    8 does in its future charitable endeavors, and I know the    9 Catholic Church, I'm a Catholic, does a lot of good    10 work, is certainly no excuse and the Diocese must be    11 held accountable for its prior actions which enable such    12 crimes; would you agree with me?</p> <p>13 MR. TONY FLYNN: I agree. I agree that the    14 Diocese has to atone and including in this way. My    15 urging is that there be some balance in your approach to    16 do it. Because we're talking about here is this is the    17 Judiciary Committee, we're talking about access to the    18 judicial process in Delaware and the appropriate way to    19 do that.</p> <p>20 REPRESENTATIVE KOWALKO: And along those    21 lines I would address this to Representative Lavelle. I    22 agree with you, Representative Lavelle, that the    23 protection is to insure background checks that are    24 legitimate and then all encompass -- legitimate</p>

20 (Pages 74 to 77)

<p style="text-align: center;">Page 78</p> <p>1 background checks, and then all encompassing background    2 checks for all entities. But that's easily a matter for    3 another separate piece of legislation. The focus of    4 this Bill, Senate Bill 29, would seem to insure that the    5 rights of victims who come forward and guarantee that    6 entities that allows these abuses to continue are    7 stopped from permitting that.</p> <p>8 So I think what we have here are two    9 separate intentions of legislation and I think that the    10 amendment is sort of -- disserves the actual intention    11 of this Bill.</p> <p>12 REPRESENTATIVE VALIHURA: Senator, I am    13 going to let Representative Lavelle respond since he was    14 directly --</p> <p>15 REPRESENTATIVE LAVELLE: Thank you,    16 Representative Valihura. Representative Kowalko, did    17 you read the amendments in Amendment Number 2?</p> <p>18 REPRESENTATIVE KOWALKO: I did.</p> <p>19 REPRESENTATIVE LAVELLE: Does it say    20 anything about criminal background checks?</p> <p>21 REPRESENTATIVE KOWALKO: No, but your --</p> <p>22 REPRESENTATIVE LAVELLE: Does it say    23 anything about policies and procedures?</p> <p>24 REPRESENTATIVE KOWALKO: No, but you're --</p>	<p style="text-align: center;">Page 80</p> <p>1 of it and I think that was testified to at the last    2 hearing, that, in fact, the grossly negligent provision    3 of Senate Bill 29 as written will allow the State to be    4 accused and held responsible in Christina District or    5 any other district held responsible.</p> <p>6 REPRESENTATIVE LAVELLE: That's fine,    7 Representative, and we can disagree on that point.    8 There is no disagreement on the intent of the sponsor to    9 allow someone who was abused five years ago access to    10 the courts, the State, it's not the intent of the    11 sponsor to waive its limited immunity. I don't think    12 that's correct either. There is no question about that.</p> <p>13 REPRESENTATIVE KOWALKO: No. I agree with    14 you on that.</p> <p>15 REPRESENTATIVE LAVELLE: There is a debate    16 on the other one and I think you clarified the debate    17 through the --</p> <p>18 REPRESENTATIVE KOWALKO: I agree with you,    19 but the way you were portraying your amendment as    20 somehow being effective to give proper circumspect to    21 records of (inaudible to reporter). I don't think    22 that's a fair portrayal of that amendment.</p> <p>23 REPRESENTATIVE LAVELLE: Okay. One other    24 comment, Representative Valihura, if I may?</p>
<p style="text-align: center;">Page 79</p> <p>1 REPRESENTATIVE LAVELLE: No, but my only    2 point is that was brought up about what the Diocese    3 does, and my point, it's not legislation, it's not an    4 amendment, it's to say that the State of Delaware,    5 perhaps, should be doing these things, just a moment,    6 sir, and I appreciate your question and your concern and    7 I do not believe this is an issue for another day. An    8 issue for another day to say who you would be abused --    9 who abused you grants you access to the courts. Do you    10 think a child who is -- a child in the Colonial School    11 District I believe it was less than three weeks ago who    12 was sexually molested, a special needs child who was    13 sexually molested by a 60-year-old white man - and we    14 know child molesters who are 60-year-old white men are    15 serial molesters, this gentleman, I suspect, did not    16 start doing this three weeks ago - do you believe that    17 that child's access to the courts should be limited?</p> <p>18 REPRESENTATIVE KOWALKO: No, and I don't    19 believe under the grossly negligent provision of the    20 Bill, Senate Bill 29 excludes --</p> <p>21 REPRESENTATIVE LAVELLE: Well, that's the    22 policy discussion --</p> <p>23 REPRESENTATIVE KOWALKO: -- excludes the    24 State from their responsibility. I believe that is part</p>	<p style="text-align: center;">Page 81</p> <p>1 REPRESENTATIVE VALIHURA: Yes.</p> <p>2 REPRESENTATIVE LAVELLE: I know in many    3 circles I have been made to be the bad guy in this    4 particular Bill. All I'm looking for is equity and I'll    5 out myself today. Why is it so important to me? You    6 don't think I appreciate you all coming here and    7 standing up for your children in many cases, for    8 relatives and friends in other cases, on the principle    9 in some cases. I stand beside you on all those issues.</p> <p>10 I have a son who is six years old and who    11 doesn't speak. He is representative of the children    12 that are in the care of the State, the most vulnerable    13 children who are in the care of the State on any day.    14 I'm here standing up for him and I would ask you all to    15 stand up with him as well. I suspect he's never been    16 sexually abused. I hope it's not the case. But I can    17 tell you he can't tell me that. He doesn't come home    18 and tell me what happened at school, dad. He doesn't do    19 that, and I'll give you an example and it's just    20 symbolic of what the amendment tries to do, and I'm    21 sorry we got off on the amendment, Representative    22 Valihura.</p> <p>23 Months ago there was an incident on the bus    24 that Matthew rides every day and the incident was with</p>

21 (Pages 78 to 81)

<p style="text-align: right;">Page 82</p> <p>1 another special needs child, having some behavior, some    2 things going on, the bus was continually late. The    3 drivers related us back something had gone on. We    4 called the district. We said hey, we hear something is    5 going on on the bus. What's going on? Oh, I'm sorry,    6 Mr. and Mrs. Lavelle, we can't discuss that with you.    7 So I'm to take comfort from that? I sure hope they    8 would do the right thing. I don't know if they will. I    9 don't know if they did 20 years ago and I don't know if    10 they'll do it 20 years from now.</p> <p>11 And as a body, not as you good people out    12 there, as a body, we are kidding ourselves if we think    13 that the issue of State responsibility and the proper    14 responsibility that should be laid on the church and    15 other institutions that have done this egregious acts    16 can be separated and we'll deal with it next time. It's    17 just not the case.</p> <p>18 REPRESENTATIVE KOWALKO: With all due    19 respect I think you missed my point. I did not say that    20 the State's responsibility in any way should be    21 separated from the responsibility of private or    22 nonprofit enterprises or entities that are addressed in    23 Senate Bill 29. What I am saying is that the issue of    24 insuring that it's the State's responsibility or any</p>	<p style="text-align: right;">Page 84</p> <p>1 were asking. So they were basically trying to say oh,    2 no, those parishes don't belong to us. Those parishes    3 are all individual entities unto themselves. They were    4 really just trying to protect assets.</p> <p>5 The Bankruptcy Court judge came back and    6 said oh, no, they're not, they're all in your name,    7 Spokane, Archdiocese of Spokane, they're all in your    8 name and therefore they are your assets. So in    9 considering what you can or can't afford we're going to    10 include those parishes. So, in turn, the Diocese of    11 Spokane decided to turn around and sell the parishes to    12 the people of the parishes. They're making them buy    13 their own parishes from the Diocese to pay the ten    14 million dollars that the church has to come up with.</p> <p>15 So when you say they had to sell everything    16 they owned, what they did was say we're going to sell    17 you your own parish and in return we'll give you the    18 title to your own parish and then from now on they can't    19 say that these are our assets. They'll be your assets    20 instead. So you made it sound like they had to, you    21 know, have bake sales and sell the chalices and    22 vestments. That is not the case at all.</p> <p>23 MR. TONY FLYNN: I think that's completely    24 incorrect, Senator. First of all, the filing - and it</p>
<p style="text-align: right;">Page 83</p> <p>1 enterprise that deals with the public's responsibility    2 to insure that they have proper background checks is a    3 separate issue that should be addressed and should be    4 addressed readily by us.</p> <p>5 REPRESENTATIVE VALIHURA: Thank you.    6 Senator Peterson.</p> <p>7 SENATOR PETERSON: Thank you, Mr. Chairman,    8 I will be brief. I want to go back to the Spokane,    9 Washington case because, Mr. Flynn, as I recall, you    10 said that the Diocese had to sell everything they owned.</p> <p>11 MR. TONY FLYNN: Yes.</p> <p>12 SENATOR PETERSON: Correct? Like the Agent    13 Orange example you gave, that's not exactly true. Well,    14 let's say it's disingenuous. The reason they sold --    15 had to sell everything they owned you was because when    16 they filed for Chapter 11 bankruptcy on the eve of trial    17 which has been done in five Dioceses, that's been one of    18 their tactics is on the eve of trial file for Chapter 11    19 bankruptcy, not Chapter 7 that says we don't have the    20 money, but Chapter 11 that says let's put everything on    21 hold while we try to shuffle things around. They used    22 an argument before the Bankruptcy Court. They were    23 trying to reduce the size of the estate, so to speak, so    24 as to avoid having to pay the victims as much as they</p>	<p style="text-align: right;">Page 85</p> <p>1 was brought up before Chapter 7 versus Chapter 11.    2 Chapter 7 is liquidation as opposed to reorganization.    3 It is absolutely the rule in business bankruptcies that    4 Chapter 11 is filed. Sometimes cases convert from    5 Chapter 11 to Chapter 7 when it appears that there is    6 not enough assets to pay the claims and keep the    7 business as a going concern.</p> <p>8 In Spokane -- I mean it's been said several    9 times that the purpose of filing these bankruptcies has    10 been to keep information from coming out. Well, in the    11 bankruptcy proceeding, for example, Portland is    12 releasing its files in connection with that, but put    13 that aside. In Spokane, we know now what has happened    14 in Spokane. We know what assets were available. We    15 know how many victims there are and we know what's to be    16 paid. They were facing 50 some trials going forward and    17 if a victim won in the first trial, got ten million    18 dollars, as we now know it would have sucked up 20    19 percent of all the assets that would be available for    20 all the victims. How in the world can that Diocese then    21 adequately compensate all its victims if the first    22 victim gets the eight million dollars or eight-figure    23 recovery?</p> <p>24 And it's the same thing in the other</p>

22 (Pages 82 to 85)

<p style="text-align: right;">Page 86</p> <p>1 Dioceses. In Portland, for example, they were facing a 2 trial with a jury demand of 130 million dollars. Well, 3 if they even got half that amount of money what's going 4 to be left for the remaining victims in that case? 5 That's why the Diocese -- why you file bankruptcy, to 6 make sure that you got as many assets as possible 7 available for the most number of victims.</p> <p>8 In terms of what Spokane did, I'm not aware 9 of any transfers of property to avoid creditors. If 10 there was such a thing that would certainly be subject 11 to litigation in the Bankruptcy Court, as would the 12 solvency of the debtor. If the claimants thought there 13 were plenty of assets here to cover all these claims, 14 they could have asked that the bankruptcy case be 15 dismissed on failure -- lack of jurisdiction because the 16 debtor was not insolvent. That has not happened in any 17 of these bankruptcies so far. None of the claimants' 18 attorneys have argued that there are not enough assets 19 or that -- that's just plenty of assets to cover all 20 these claims.</p> <p>21 And what happened in Spokane on the parish 22 ownership issue is that, as is commonly the case I'm 23 surprised to learn, not in this Diocese, the assets of 24 the parishes are titled in the name of the Bishop.</p>	<p style="text-align: right;">Page 88</p> <p>1 that money. And, by the way, the money they have to 2 raise equals a total amount of the annual appeal every 3 year in that Diocese.</p> <p>4 SENATOR PETERSON: And in return for the 5 ten million dollar assessment, which is based on the 6 wealth of each parish, based on their collections --</p> <p>7 MR. TONY FLYNN: Yeah.</p> <p>8 SENATOR PETERSON: -- then the title to 9 those buildings will be turned over to the parishes.</p> <p>10 MR. TONY FLYNN: It's not in return. It's 11 part of the plan, apart from that, that the parishes --</p> <p>12 SENATOR PETERSON: So in return for ten 13 million dollars the Diocese is now going to deed those 14 properties over to the parishes.</p> <p>15 MR. TONY FLYNN: Not in return for the ten 16 -- the ten million dollars doesn't go to the Diocese in 17 any event.</p> <p>18 SENATOR PETERSON: But those things are 19 going to happen at the same time.</p> <p>20 MR. TONY FLYNN: No, they're not going to 21 happen at the same time. The parishes have to come up 22 with the ten million dollars by December 31st. If they 23 don't do that, the parishes will all be required, by the 24 Bankruptcy Court now, to sign a note pledging to pay</p>
<p style="text-align: right;">Page 87</p> <p>1 That's very commonly done around the country. So there 2 was an issue, is the parish property assets of the 3 bankruptcy estate or not. The trial judge didn't rule 4 that they would be. That was reversed on appeal by the 5 district judge and it was never resolved finally because 6 there was a settlement reached in the bankruptcy 7 proceeding.</p> <p>8 SENATOR PETERSON: So what part of what I 9 said do you disagree with?</p> <p>10 MR. TONY FLYNN: There were no transfers -- 11 the Diocese did not sell back to the parishes, post 12 bankruptcy as part of the plan all the parishes will be 13 separately incorporated and will have deeds to their own 14 assets.</p> <p>15 SENATOR PETERSON: I think that's what I 16 said.</p> <p>17 MR. TONY FLYNN: You said -- you suggested 18 that the Diocese was holding up the parishes by selling 19 them back their parishes in exchange to raise money for 20 the bankruptcy settlement. That is not the case. 21 Indeed, indeed, the parishes are going to have to raise 22 ten million dollars. It's been allocated among the 23 parishes in accordance with their respective shares of 24 the annual appeal and they're going to have to raise</p>	<p style="text-align: right;">Page 89</p> <p>1 this money over time to adequately fund the 47 million 2 dollar settlement fund.</p> <p>3 SENATOR PETERSON: And then the parishes 4 get their parish?</p> <p>5 MR. TONY FLYNN: They will get it 6 regardless of their contribution.</p> <p>7 SENATOR PETERSON: Judge -- I mean, 8 Professor Marci Hamilton will be here to address this 9 issue. She's done a lot of research on Spokane and the 10 other four Dioceses that have all claimed Chapter 11 11 bankruptcy on the eve of trial and she can testify at 12 great length on what happened in Spokane and other 13 places, including Colorado -- I'm sorry, including 14 Portland where the Archdiocese hired a PR firm to -- to 15 claim poverty, to talk about -- to convince the faithful 16 that programs would have to close and parishes and so 17 forth and so on, and spent -- one archdiocese spent 17 18 million dollars just on marketing that notion and on 19 attorneys fees. So we have Archdioceses that spend 17 20 million dollars on PR and lawyers fees to avoid paying 21 out any claims to any of the victims.</p> <p>22 So I just, you know when you said that 23 Spokane had to sell everything that they owned, what did 24 they sell then and to whom did they sell it?</p>

23 (Pages 86 to 89)

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<p>1           MR. TONY FLYNN: They sold the parish    2 headquarters. They sold whatever real property they    3 owned. They sold the Bishop's house. They sold    4 whatever assets were titled in the name of the Diocese.</p> <p>5           SENATOR PETERSON: But all the parishes    6 were titled in the name of the Diocese.</p> <p>7           MR. TONY FLYNN: They were titled in the    8 name of the Bishop, later ruled by the court not to be    9 the property of the Diocese for bankruptcy purposes.</p> <p>10          REPRESENTATIVE LAVELLE: Let me correct    11 you, Senator. On the Portland payments, however, indeed    12 17 million dollars was paid in the bankruptcy to all    13 court-approved professionals. The 17 million dollars    14 was not paid to a public relations firm. The only    15 public relations firm paid through the 17 million was    16 the claimant's counsel's public relations firm. The 17    17 million dollars included payment for the defense of the    18 underlying cases, payment for the insurance litigation,    19 because Portland had to litigate with its insurers over    20 coverage, payments to the claimant's counsel. I mean,    21 one of the real problems with bankruptcy is it's ungodly    22 expensive. You got to pay everybody's lawyers and    23 consultants in the bankruptcy proceeding and that's what    24 the 17 million. It went to everybody, not just counsel</p>	<p>1 to rest once again the hierarchy's oft repeated argument    2 that victims have driven Dioceses to litigation the    3 church cannot afford without undermining its provision    4 of essential service and religious practices. As I    5 said, Professor Hamilton is a whole lot more articulate    6 on the issue of bankruptcy than I am. But I just didn't    7 want to -- you know, I don't think three buildings is    8 everything the Diocese owned but we can let it rest    9 there.</p> <p>10          REPRESENTATIVE VALIHURA: Thank you. Any    11 other questions? Thank you, Mr. Flynn. We really    12 appreciate you being here today.</p> <p>13          MR. TONY FLYNN: Thank you, Mr. Chairman.</p> <p>14          REPRESENTATIVE VALIHURA: Rita Moracco.</p> <p>15 Mark Reardon is next and is Claire Dubius in the room    16 today? Claire is not here. That will be the -- is Ed    17 Burke in the room today? Mr. Burke, you will be the    18 last of the which I'll call the free after Mr. Reardon,    19 free reign, and after that I will ask my colleagues    20 whether they want to take a five-minute recess and after    21 that we have seven folks who have signed up that will be    22 time limited.</p> <p>23          Ms. Moracco.</p> <p>24          MS. RITA MORACCO: Good afternoon,</p>
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<p>1 for the Archdiocese.</p> <p>2           And the only PR expense that was incurred    3 through the bankruptcy proceeding anyway was the    4 required two nationwide notices at the cost of \$250,000    5 apiece to find these victims in Idaho or wherever who    6 would have claims in that bankruptcy proceeding.</p> <p>7           SENATOR PETERSON: Well, with all due    8 respect I will disagree with you.</p> <p>9           REPRESENTATIVE LAVELLE: Very well.</p> <p>10          SENATOR PETERSON: I don't want to sit here    11 and read Professor Hamilton's work because she'll be    12 here to testify herself, but a lot of the information    13 that you just gave us was pretty self-serving and I have    14 not looked at in the legal context as Professor Hamilton    15 has done -- has found.</p> <p>16          REPRESENTATIVE LAVELLE: What I'm telling    17 you is in the filings of the Bankruptcy Court.</p> <p>18          SENATOR PETERSON: Just one line from    19 professor Hamilton. This is talking about Portland.    20 The Archdiocese while placed in the position to settle    21 with these victims from the very beginning making the    22 over 17 million dollars it spent on professional fees    23 seem hardly justified and the bankruptcy filing nothing    24 more than a delaying tactic. This settlement also laid</p>	<p>1 Honorable judiciary members and Chairman, Representative    2 Valihura. My name is Rita Moracco and I speak to you as    3 a citizen of Delaware. I'd like to give special thanks    4 to Senator Peterson for bringing this Senate Bill    5 forward and having the tenacity to -- to push it through    6 the Senate and to bring it to the House hopefully. I    7 ask that you vote to move Senate Bill Number 29 to the    8 full House for a vote and passage into law. Survivors    9 of childhood abuse are left with injuries to their    10 psyche that may vary in degree but few are able to live    11 full and happy lives.</p> <p>12          I use an analogy that perhaps people can    13 understand. Some -- some of these individuals    14 experience the same degree of debilitation that those    15 with spinal cord injuries experience. While others can    16 be compared to that of an amputee. They have adapted    17 their lives to accommodate a severed limb but the limb    18 will never grow back.</p> <p>19          This issue has never been about money or    20 vengeance. It's about accountability, accountability    21 for the perpetrator; and validation, validation for the    22 injury sustained by the victim.</p> <p>23          This Bill can reduce the number of victims    24 in the future. Thank you for extending the public</p>

24 (Pages 90 to 93)

<p>1 hearing through today. Please conclude that the Bill 2 must be moved to the full House for passage. Senate 3 Bill 29 does not take away the control of organizations, 4 to hold their employees accountable. It only holds 5 organizations accountable when they protect 6 perpetrators.</p> <p>7 My profession is as an executive director 8 of a nonprofit. If I hear rumors of any abuse toward 9 any individual, child or not, I am duty bound to report 10 this to my Board of Directors. If they, in turn, choose 11 to ignore my report and not investigate it, it is my 12 opinion that they should be held accountable. The 13 impact of the accountability should be sufficient to 14 give great pause to repeating such protection of 15 offenders.</p> <p>16 The Roman Catholic Church and others are 17 not being punished for having priests that were 18 criminals. They are being held accountable for 19 knowingly harboring sexual offending criminals. Thank 20 you very much.</p> <p>21 REPRESENTATIVE VALIHURA: Thank you, 22 Mrs. Moracco. Could -- Miss Moracco, thank you. You're 23 an executive director of a nonprofit?</p> <p>24 MS. RITA MORACCO: Yes.</p>	<p>Page 94</p> <p>1 REPRESENTATIVE VALIHURA: Thank you, Rita. 2 Any other questions? No. Yes, ma'am. Done. Super. 3 Thank you.</p> <p>4 MS. RITA MORACCO: Thank you.</p> <p>5 REPRESENTATIVE VALIHURA: My constituent, 6 Mark Reardon. No, they're not abandoning you. I think 7 that break I was proposing needed to come a little 8 earlier than I was going to make it.</p> <p>9 MR. MARK REARDON: I am acutely aware that 10 I am all that stands between us and the five-minute 11 break so I can appreciate.</p> <p>12 REPRESENTATIVE VALIHURA: Actually 13 Mr. Burke is.</p> <p>14 MR. MARK REARDON: Mr. Chairman, members of 15 the committee, my name is Mark Reardon. I am a Delaware 16 attorney. I'm a former House attorney. I'm in private 17 practice in Wilmington. It has been my privilege over 18 the past 20 years or so to have either served on the 19 Board or serve as counsel of a variety of nonprofit 20 agencies: The Ministry of Caring, St. Francis Hospital, 21 Salesianum School, Archmere Academy, Nativity 22 Preparatory, Naamans Little League and others.</p> <p>23 In my practice I have been defending 24 institutions who have rarely, thankfully, but painfully</p>
<p>Page 95</p> <p>1 REPRESENTATIVE VALIHURA: And your 2 organization does deal with children, does it not, 3 somewhat?</p> <p>4 MS. RITA MORACCO: We deal with parents of 5 children. We often -- it is rare that we have direct 6 contact with children to be very honest.</p> <p>7 REPRESENTATIVE VALIHURA: Have you 8 discussed your liability under this proposed legislation 9 with your legal counsel?</p> <p>10 MS. RITA MORACCO: Um.</p> <p>11 REPRESENTATIVE VALIHURA: Not your personal 12 but your organization's liability.</p> <p>13 MS. RITA MORACCO: Has the Board discussed 14 it with their legal counsel? Not that I'm aware of, no.</p> <p>15 REPRESENTATIVE VALIHURA: So you're not 16 here on behalf of your organization? You're here as --</p> <p>17 MS. RITA MORACCO: No, I am not here on 18 behalf of my organization. I'm here as a citizen of 19 Delaware that knows that many, many children's lives 20 have been destroyed and that this is one way that we can 21 put at least a bump in the road for perpetrators that 22 they will have some pause, that they will never, ever be 23 able to skip out on their accountability, that someone 24 will always be looking over their shoulders.</p>	<p>Page 97</p> <p>1 been accused of a volunteer or an employee who molested 2 a child. I am speaking not on behalf of any of these 3 institutions specifically, but, rather, from the vantage 4 point I have gathered from my years on the front line. 5 I support the legislative initiative to lengthen the 6 statute of limitations for civil claims for sex abuse, 7 but not to the extent proposed by Senate Bill 29. The 8 timeframe is too open-ended. And this Bill, this Bill 9 has the real potential to unfairly punish innocent 10 organizations.</p> <p>11 I'd like to spend just a minute speaking 12 from the perspective of the organizations who are 13 wrongly accused. As drafted, this Bill goes too far, 14 and when I say too far I am specifically saying the Bill 15 should, one, not leave the statute of limitations open 16 for an indefinite duration of time; two, should not be 17 infinitely retroactive; and, three, should be directed 18 only towards the abuser.</p> <p>19 I will address two of the primary reasons 20 why Senate Bill 29 should be amended from the 21 perspective of the falsely accused institution. First, 22 the sting of the word child molester. Let's make no 23 mistake. For the actual violator, for the perpetrator, 24 for the abuser, we all seem to agree, the full force of</p>

25 (Pages 94 to 97)

<p style="text-align: right;">Page 98</p> <p>1 the law should come bearing down upon them. They 2 deserve to be brandished as a molester. As someone 3 before me said, lock them up and throw away the key. 4 They deserve their due punishment under the law and then 5 some.</p> <p>6 However, for those implicated by mistake or 7 by false accusation, for wrongly accused institutions or 8 people, the sting of the word child molestation is 9 simply devastating. The word child molester is heinous 10 and it's life changing. Just as the act of abuse is 11 heinous and life changing for the innocent victim, so, 12 too, is the moniker child molester heinous and life 13 changing for the innocent accused.</p> <p>14 How does an innocent person defend himself 15 when the civil suit alleging abuse is filed? How does 16 one prove that something did not happen five years, ten 17 years, 20 years ago? How does an innocent organization 18 undo the taint, remove the smear of being accused of 19 harboring a molester? Recall that when criminal charges 20 are brought there is an orderly time-tested process. A 21 process that screens these cases: Probable cause before 22 arrest, the Attorney General -- Attorney General's 23 Office felony screening unit before a grand jury review 24 and then grand jury review before indictment and trial.</p>	<p style="text-align: right;">Page 100</p> <p>1 you more, and I'm aware of the very high ethical 2 standards of our brothers and sisters in the Delaware 3 bar and I'm casting no aspersions on them. I am 4 recognizing the phenomenon of distorted memory over 5 time.</p> <p>6 Let me give you an example pending from the 7 Delaware courthouse today. In a civil case pending in 8 Delaware today, where the sex abuse relates back to the 9 70s and 80s, the plaintiff alleged that a Catholic 10 priest in a supervisory role harbored a pedophile. For 11 the first two years of that lawsuit the plaintiff as 12 alleged -- the plaintiff alleged, in fact he swore, that 13 the specific priest, the harboring -- the harboring 14 priest, was a priest of a certain name. Now, when 15 unmistakable evidence is brought forth in the discovery 16 process that it couldn't have been that priest of that 17 specific name, the plaintiff and his very well-intended 18 attorney amended their pleadings to recognize that it 19 was a similar-sounding completely different priest.</p> <p>20 Relate back to my comment about the sting 21 of the word child molestation. This was a well-intended 22 plaintiff who sat in the law office of an attorney on 23 the eve of statute of limitations. Did they do their 24 due diligence? Yes. Did that lawyer meet his very high</p>
<p style="text-align: right;">Page 99</p> <p>1 However, in the civil arena, that most 2 directly exclusively impacted by Senate Bill 29, there 3 is no comparable filtering system. There is literally 4 no gate between the courthouse and the accuser. Any 5 man, woman or child in Delaware, with or without --</p> <p>6 REPRESENTATIVE VALIHURA: Counsel, I mean, 7 I'll have to call you counsel now because you're acting 8 like one, Rule 11 is that gatekeeper and they have to 9 meet Rule 11 and, you know, that's a significant hurdle 10 in litigation, and you know it and I know it and the 11 Supreme Court of Delaware really knows it.</p> <p>12 MR. MARK REARDON: Mr. Chairman, you and I 13 can count on one hand the number of Rule 11 sanctions 14 that have been imposed by the Delaware Court. The fact 15 of the matter is that Rule 11 is not a screening 16 mechanism. It is a sanction imposed by the court for 17 frivolous litigation after the horse has left the gate. 18 The reality is there are brothers and --</p> <p>19 REPRESENTATIVE VALIHURA: But it does serve 20 as a screening. I mean I won't even think about 21 bringing, unless I think about Rule 11 and whether I 22 have enough facts to insure that I'm not going to get 23 slammed by the court when I --</p> <p>24 MR. MARK REARDON: I couldn't agree with</p>	<p style="text-align: right;">Page 101</p> <p>1 Rule 11 standard? Yes. But for similar sounding names 2 these are two entirely different men, one of whom's 3 reputation for two years was shaded by a very dark cloud 4 called child molestation.</p> <p>5 That's the kind of issue I'm referring to.</p> <p>6 Not as to the case being entirely frivolous or not to a 7 lawyer buying hook, line and sinker a tale of 8 fabrication. I am talking about the innocent memory 9 mistake and the propensity for that to occur when we go 10 back ten, 20, 30 years.</p> <p>11 I'm defending a case now where the 12 allegations relate back 50 years. The alleged period of 13 abuse was 1956 and '57. The supervising priest is gone. 14 The then Bishop is gone. The Vicar General is gone. 15 There was no parish council. There are no parish 16 records. That case is in our Superior Court today. It 17 is wrought with memory potholes. That's the kind of 18 case I'm citing as an example. Not as to Rule 11 as a 19 screening mechanism, but for the danger of using 20 ancient, ancient facts to bring a lawsuit in 2007 or 21 2008.</p> <p>22 Let me cite another example.</p> <p>23 REPRESENTATIVE VALIHURA: Why -- tell me 24 how is it that suit is being brought without this Bill?</p>

26 (Pages 98 to 101)

<p style="text-align: right;">Page 102</p> <p>1           MR. MARK REARDON: That is precisely the 2 question we have in front of the Superior Court. Let me 3 just --</p> <p>4           REPRESENTATIVE VALIHURA: Because what are 5 we here for if you can bring that claim today what are 6 we dealing with?</p> <p>7           MR. MARK REARDON: The Delaware statute of 8 limitations, as everyone in this room is aware, is two 9 years unless an injury is inherently unknowable. Now, 10 inherently unknowable as it has been developed in the 11 Delaware case law relates to oh, the common things, 12 well, thankfully not too common, but by way of example, 13 the surgeon that inadvertently leaves a sponge in the 14 belly of a patient and the patient doesn't know until an 15 infection flares up five years after the fact. That 16 constitutes inherent unknowability. The acquiring 17 company that buys a subsidiary and doesn't realize an 18 accounting firm's negligence until years after the fact. 19 Inherent unknowability.</p> <p>20           The short answer to your question, Mr. 21 Chairman, is this phrase repressed memory. The 22 plaintiff's bar in Delaware, and now there are two cases 23 pending and several more underway, are attempting to 24 skirt the two-year statute of limitation by saying these</p>	<p style="text-align: right;">Page 104</p> <p>1 law will be advancing to the point of adding repressed 2 memory.</p> <p>3           So, long answer to your short question, why 4 is that 50-year-old case in the courthouse? It's 5 because by the language of that complaint, that 6 complaint said I would have brought suit if I knew I had 7 been harmed but these harms were so traumatic that as a 8 child that I didn't appreciate the danger that I was 9 subjected to until now that I'm 60 some years old.</p> <p>10           REPRESENTATIVE VALIHURA: Thank you.</p> <p>11           MR. MARK REARDON: Let me cite another 12 example or two as to institutions wrongly or potentially 13 wrongly accused and why Senate Bill 29 should have at 14 least some retroactive backstop and some prospective 15 limitation in its reach in terms of the statute of 16 limitations. In Delaware today is a 40-year-old man who 17 alleges - just recently brought this to our attention - 18 earlier this year he recalled that he was victimized by 19 a sexual abuser 30 years ago. His abuser was a minister 20 in training from an out-of-state seminary who would 21 spend weekends at this Delaware-based church. This 22 visiting seminarian ran the Sunday evening teen group 23 that met in the church basement Sunday nights during the 24 school year.</p>
<p style="text-align: right;">Page 103</p> <p>1           -- the traumatic amnesia imposed on my client, the 2 plaintiff, was so significant that when he was 15 or 16 3 or 17 he couldn't appreciate the wrongfulness of what 4 was happening, in fact he's blocked it out for the past 5 19 years. It's only now with the headlines and the 6 stories and the legislation and the attention that sex 7 abuse is getting that these memories are beginning to 8 resurface.</p> <p>9           It is a wildly debated phenomenon in the 10 medical clinical community and I am certainly ill 11 equipped to take on that discussion today. I can only 12 say that all quarters of the medical community are 13 looking with careful eyes at this phenomenon, this 14 clinical phenomenon recognized as either traumatic 15 amnesia or false memory. The Superior Court in Delaware 16 has up to today simply taken the point, we don't know if 17 there was traumatic amnesia or repressed memory in this 18 case, and we don't even know if repressed memory is 19 valid enough to make the legal decision that that 20 constitutes a new element of inherent unknowability 21 under Delaware's statute of limitations law, but we do 22 know that additional discovery and exchange of expert 23 witness reports and depositions are going to be required 24 for a full and fair discernment of whether Delaware case</p>	<p style="text-align: right;">Page 105</p> <p>1           Now this victim who I said is 40 can only 2 recall today that his abuser had dark hair and a slender 3 build. The victim does not remember the man's name. He 4 remembers the name of the church. It's a small church 5 in the Newark area and it's unaffiliated with any major 6 denomination or Diocese. The victim doesn't remember 7 the date or even the month, only that it must have 8 occurred during the school year since that's when his 9 youth group would meet on Sunday evenings. The church's 10 records do not go back 30 years. They can't even begin 11 to identify the names of the young seminarians who on a 12 rotating regional tour of duty visited that church over 13 the decades. What the church does know is that at no 14 time in the past 30 years has a claim of abuse ever been 15 made against anyone associated with that church until 16 now.</p> <p>17           However, under Senate Bill 29 as introduced 18 this victim can directly sue the church, and trust me, 19 when that lawsuit is filed it will be public record and 20 the lawsuit will no doubt assert against this church 21 claims of gross misconduct, negligent hiring, negligent 22 supervision and breach of fiduciary duty, that legal 23 duty owed to any overseeing institution to the 24 individuals in its charge. Why? All because this</p>

<p style="text-align: center;">Page 106</p> <p>1 church is alleged to have had an intern on weekends, a 2 visiting student minister, who is alleged to have 3 committed a sexual assault 30 years ago. How does that 4 institution today defend itself against this claim, 30 5 years after the fact, without any information as to the 6 date, the time, the place, the circumstance or whether 7 there were even witnesses.</p> <p>8 In this case also unintentionally impacted 9 by Senate Bill 29, besides the institutional church that 10 I'm referring in this example, are other law-abiding 11 ministers in this community who might unfortunately 12 today be in their 50s, be male, and once have had 13 slender build and dark hair. These men will be painted 14 with too broad a brush. People in his congregation will 15 wonder, will worry, was it him? Maybe it was him. 16 Maybe it was him. Ministers will needlessly worry, do 17 they think it's me?</p> <p>18 Another brief third example, this 19 highlights the fact that not all lawsuits are filed for 20 seeking justice. Not all lawsuits clear that very high 21 standards that our brothers and the sisters of the bar 22 are bound by Rule 11: Revenge. These are not the kind 23 of lawsuits brought by the people in this room. I know 24 these families. They have watched me grow up. I know</p>	<p style="text-align: center;">Page 108</p> <p>1 REPRESENTATIVE VALIHURA: Counsel, 2 Mr. Reardon, I should say, those spite lawsuits could 3 happen today. I mean someone -- no one is going to sit 4 here and say there is no sexual abuse going on in our 5 prisons or in our schools. I mean, that is exactly 6 Mr. Lavelle's point. And is there any evidence that 7 these spite lawsuits would be greater than is already 8 occurring in the general litigation system today?</p> <p>9 MR. MARK REARDON: No, they are not, and I 10 don't speak to you from any sociological data study. I 11 don't speak to you from anything other than the 12 telephone that I pick up every day. This particular 13 caller, this particular alleged abuser in speaking with 14 his former charge at the Ferris School, said simply, you 15 know, when the floodgates open I am going to be standing 16 in line. I am going to be standing in line. For one, 17 it's no longer a shame to say I was an abuse victim and 18 I am going to get in line and this is my way to bring 19 you down, brother. That's as it was reported to me.</p> <p>20 Listen, there is data on false claims. 21 There is a lot of data on false claims. I can cite to 22 you just a few examples but there is going to be time 23 for this to be reviewed in more detail. In Charlestown, 24 South Carolina, in 2003 the Diocese of Charlestown</p>
<p style="text-align: center;">Page 107</p> <p>1 their children. I know these victims. I have lived in 2 the community for my entire life of the families that 3 are before you. I'm talking about a different kind of 4 case.</p> <p>5 And let me tell you one that you will read 6 about. A caller to my office this past winter expressed 7 his first-hand knowledge, in fact his first-hand fear 8 that as a former employee of the Ferris School - the 9 caller by the way is currently a police officer in 10 Delaware - but in his younger days as an employee at 11 Ferris school a former detainee who is now 33 years old 12 has called to say I'm going to sue you and I'm going to 13 say you molested me. Why is that? Purely for the 14 revenge of being the front line of the law in juvenile 15 proceedings 18 years ago. The alleged accuser has 16 absolutely nothing to lose except the most heinous, 17 shadowy way of seeking revenge, to take a husband, a 18 father, a city police officer and say you molested me 19 when I was at Ferris 18 years ago.</p> <p>20 This proposed window, for all the good that 21 it will do in allowing retroactive claims to come 22 forward, leaves open spite lawsuits. Teachers, coaches, 23 camp counselors, fathers or mothers of estranged 24 children are all vulnerable under Senate Bill 29.</p>	<p style="text-align: center;">Page 109</p> <p>1 reported that it had received 48 allegations of abuse 2 involving 24 different -- 3 (Whereupon Tape 2, Side 1 ended. The 4 following is Tape 2, Side 2.</p> <p>5 MR. MARK REARDON: I'm sorry. 25 were 6 determined to be without merit and only 23 proceeded to 7 the class action settlement trust.</p> <p>8 Other jurisdictions of note. In Covington, 9 Kentucky, in 2003 and 2004 class action lawsuits were 10 filed against a Diocese there. So far 263 of those 11 claims have been submitted to special masters, of which 12 241 have been completed and adjudicated and of those 241 13 124 of those claims have been rejected as without merit. 14 124 of the 241 by the special master of the settlement 15 trust in a class action have said there is not the 16 indicia of credibility, there is not the independent 17 corroboration of evidence to justify you getting in the 18 settlement line.</p> <p>19 REPRESENTATIVE VALIHURA: I think we have 20 two questions. One from Senator Peterson and one from 21 Representative Hudson on these topics.</p> <p>22 MR. MARK REARDON: Yes, Representative.</p> <p>23 REPRESENTATIVE HUDSON: Well, I think it's 24 great that the claims were proven that they weren't</p>

<p style="text-align: right;">Page 110</p> <p>1 worthy. That's what the system is for and I hope there 2 aren't attorneys in Delaware who will try to do that, 3 put their reputation on the line and try to take a lousy 4 case to the Honorable Superior Court of Delaware.</p> <p>5 MR. MARK REARDON: You're saying you do 6 hope there are or there are not?</p> <p>7 REPRESENTATIVE HUDSON: No, I -- well, I 8 think the system will prove that only a good case will 9 go through. Who knows what will happen? I mean you're 10 a good attorney. You're not going to represent one of 11 those losers who is trying to do a revenge, but maybe 12 somebody will, but when it gets to the court then the 13 court will sort it out, I'm sure, and that's the system 14 we have in place with this Bill, I believe.</p> <p>15 MR. MARK REARDON: It is true, but how do 16 you unring the bell? How do you unring the bell when 17 you are named as a defendant in a lawsuit that a year 18 after the fact is proven without merit? The front page 19 maybe of the B section of the News Journal will be: 20 Abuse case filed against fill in the blank, abuse case 21 filed, fill in the blank, the Reardon, the Reardon Day 22 Care Center. After discovery, after document 23 production, after Interrogatories and depositions and 24 after briefing and the court says this is a frivolous</p>	<p style="text-align: right;">Page 112</p> <p>1 REPRESENTATIVE HUDSON: But, further, that 2 has nothing to do with the timeline either. You're just 3 trying to create an air of there is something horrible 4 that is going to happen with this Bill. These tragedies 5 are going to occur. That has nothing to do with the 6 merits of the Bill in the timeline to your back -- or 7 going forward.</p> <p>8 MR. MARK REARDON: I don't have the stature 9 or the presence or the vocabulary to create an air of 10 any kind. I'll tell you, Representative --</p> <p>11 REPRESENTATIVE HUDSON: You were making me 12 gasp so you did a good job. I was very worried and but 13 then I realized, no, we have the Delaware court system. 14 It won't go through. I settled myself down --</p> <p>15 MR. MARK REARDON: I respect your comment 16 that this will all be ferreted out in the court system. 17 My only pitch is that in your working of this Bill, in 18 your deliberations over this Bill, and in your vote of 19 this Bill, please stop and consider whether it is a 20 balanced approach towards the very long overdue, long 21 ignored rights of abuse victims, and the institutions 22 that are being accused of harboring the molesters. That 23 is my only presence today is to ask you to take that 24 stop-and-think moment and say in justifying this very,</p>
<p style="text-align: right;">Page 111</p> <p>1 matter, there will not be a headline of comparable place 2 or size that said Reardon Day Care Center exonerated. 3 How do you remove the sting, the taint, the dark heavy 4 cloud that follows the innocently accused? That's the 5 perspective I'm standing here. I'm urging --</p> <p>6 REPRESENTATIVE HUDSON: Well, that happens 7 with other cases in Delaware, today, even, you know, 8 even a neighborhood barking dog case or --</p> <p>9 MR. MARK REARDON: Representative, with all 10 due respect, having been accused of owning a back -- a 11 backyard chain link fenced-in barking dog doesn't carry 12 the same to-your-obituary-page stigma of being accused 13 of being a child molester, with all due respect. And 14 your example is a good one to say that frivolous cases 15 are screened out.</p> <p>16 REPRESENTATIVE HUDSON: Yes.</p> <p>17 MR. MARK REARDON: I'm simply saying that 18 in Delaware other than the words serial murder there is 19 not a more disastrous moniker that you can tag to an 20 individual or institution than the word child abuser, 21 and I say to -- to the actual abusers, you're right, you 22 deserve that moniker, and I wish there was a stronger 23 word in our vocabulary. Words, I don't have the words 24 to use an adjective in front of the word child molester.</p>	<p style="text-align: right;">Page 113</p> <p>1 very worthy goal of extending retroactively and 2 prospectively the statute of limitations so these 3 families here today and others like them can have their 4 day in court. Am I going too far?</p> <p>5 REPRESENTATIVE HUDSON: No, you're fine. 6 Let me ask another question.</p> <p>7 MR. MARK REARDON: Sure.</p> <p>8 REPRESENTATIVE HUDSON: Am I allowed?</p> <p>9 REPRESENTATIVE VALIHURA: Sure.</p> <p>10 REPRESENTATIVE HUDSON: You mentioned you 11 were involved in a case, one of these cases now?</p> <p>12 MR. MARK REARDON: Several.</p> <p>13 REPRESENTATIVE HUDSON: Several. And who 14 are -- which side are you representing?</p> <p>15 MR. MARK REARDON: I have the institutional 16 defendants, no alleged abusers or criminals, if you 17 will.</p> <p>18 REPRESENTATIVE HUDSON: Okay. But yet 19 you're here to tell us how to rewrite the Bill. I mean 20 I just -- it feels very awkward and again --</p> <p>21 MR. MARK REARDON: In what sense?</p> <p>22 REPRESENTATIVE HUDSON: In the sense that 23 you're involved in a case and we're trying to make a 24 fair law and you're here to say do this, do that,</p>

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1 whatever, and you're perhaps representing you say 2 perhaps an organization or? 3 MR. MARK REARDON: Plural, organizations. 4 REPRESENTATIVE HUDSON: Okay, and I think I 5 might have read about that in the paper. 6 MR. MARK REARDON: There are several, but 7 only one with -- you're referring to the Eden versus 8 Salesianum case, that is the only case pending against 9 Salesianum. 10 REPRESENTATIVE HUDSON: And that is where 11 the priest was sent to South Africa? 12 MR. MARK REARDON: No. 13 REPRESENTATIVE HUDSON: Sorry. I got my 14 cases -- but that was you, too, isn't it? 15 MR. MARK REARDON: The priest involved is 16 not my client, but the school that he used to be 17 principal of is my client and the religious order of 18 which he is a member is my client, yes. 19 REPRESENTATIVE HUDSON: Okay. 20 MR. MARK REARDON: No, he was not sent to 21 South Africa. He's got world-wide internal ministry and 22 his travels have taken him. 23 REPRESENTATIVE HUDSON: And actually back 24 to my discussion on the -- what's the term that the	1 Attorney General's Office on April 11th, 2002. On April 2 13th, 2002 that priest was removed from public ministry. 3 He has been in internal ministry, writing grant 4 foundation -- foundation grants, organizing the 5 distribution of mission funds to the oblate missions 6 around the world. He is not in public ministry and any 7 suggestion to the contrary is -- 8 REPRESENTATIVE HUDSON: And not in youth 9 ministry? 10 MR. MARK REARDON: Certainly not in youth 11 ministry. This is all very much in the public record. 12 The folks who had their own self interests in getting 13 this whole South Africa thing out there ignored 14 completely sworn Interrogatory Answers in our Superior 15 Court. Was it in their political self interest to do 16 that? Sure. And do I say there is a pretty sharp piece 17 of spinning advocacy? Sure. But did it ignore certain 18 record facts on the court's docket at the moment that he 19 said these South African travel -- absolutely. 20 REPRESENTATIVE HUDSON: I'm sorry. I 21 didn't mean to get you off -- 22 MR. MARK REARDON: That's all right. 23 REPRESENTATIVE HUDSON: -- on that issue. 24 Let me ask you, do you agree with Tony Flynn about the
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1 church uses, the Safe Environment Program? 2 MR. MARK REARDON: Yes. 3 REPRESENTATIVE HUDSON: He didn't fall 4 under a person that needed to not go to -- 5 MR. MARK REARDON: That's correct. 6 REPRESENTATIVE HUDSON: -- continue in his 7 ministry under the Safe Environment Program? 8 MR. MARK REARDON: Yes. You're correct, 9 Representative. That's right. Thank you for picking 10 that up. The Safe Environment Program is for those who 11 are admitted, corroborated or substantiated abusers. 12 This man, 40 plus years a priest, has one allegation 13 from one accuser dating back to 1985. He has been 14 relieved of his public ministry. He can not do anything 15 in the way of rendering the sacraments in a public way. 16 What he is doing, because it's not a criminal charge 17 pending, it is only a civil claim in the context of the 18 Delaware court system that says we're alleging that you 19 worked for an organization that negligently permitted 20 you to have contact with this young man. As a result of 21 that accusation alone, the oblates, beholden to the 22 Diocese in which that priest was then working, North 23 Carolina, removed him instantly, instantly, from public 24 ministry. The claim was brought to the Delaware	1 year 1987 being an appropriate stop date? Is that 2 something that's on your mind as well? 3 MR. MARK REARDON: I haven't dwelled on it, 4 but it certainly seems logical to me that if in the due 5 process analysis in the criminal vein we have said that 6 due process is appropriate to reach back to what was it, 7 July of 1987? Is that the date? 8 REPRESENTATIVE HUDSON: 1987. 9 MR. MARK REARDON: I don't know why we 10 would have a different definition of due process in the 11 civil arena than in the criminal arena. So to that 12 extent I can say yes, wherever the Legislature believes 13 it can go back criminally certainly would make sense to 14 me civilly. 15 REPRESENTATIVE HUDSON: But you know that 16 it might not meet all the needs of all the victims 17 picking an arbitrary date like that, so therefore it is 18 unequal and unfair to all concerned? 19 MR. MARK REARDON: Well, statutes of 20 limitations are harsh. The United States -- 21 REPRESENTATIVE HUDSON: That's what we're 22 trying to get rid of. 23 MR. MARK REARDON: The United States and 24 the Delaware Supreme Court have recognized that statutes

30 (Pages 114 to 117)

<p style="text-align: center;">Page 118</p> <p>1 of limitation are harsh, and those same courts have said  2 in the pursuit of justice, if it means the occasional  3 denial of rendering of aid to a worthy victim that we  4 have maintained our sense of due process, then that's a  5 tradeoff that the court systems have upheld in  6 recognizing statutes of limitations. I don't know why  7 the analysis would be different here, Representative.</p> <p>8 REPRESENTATIVE HUDSON: Thank you.</p> <p>9 MR. MARK REARDON: I am delaying the  10 long-awaited five-minute break, but let me just conclude  11 with a second reason -- I'm sorry, Senator - a second  12 primary reason why this Bill ought to be amended. As  13 drafted Senate Bill 29 completely eliminates the statute  14 of limitations. For these kinds of cases that should be  15 particularly troubling to those of you charged with  16 monitoring the fairness of our justice system. By the  17 nature of these abuse allegations typically there are no  18 witnesses, there are no records, there is no physical  19 evidence. Compare that to another kind of a civil  20 lawsuit, a car crash or a breach of contract or a  21 medical malpractice claim where there is contemporaneous  22 records, where there is photographs, there is police  23 reports and eyewitnesses; here nothing but memories,  24 emotion, perhaps faded memories, distorted over time.</p>	<p style="text-align: center;">Page 120</p> <p>1 REPRESENTATIVE VALIHURA: Yes, Senator.  2 SENATOR PETERSON: Just a couple comments,  3 Mr. Reardon. You note the Supreme Court talking about  4 records being lost and witnesses, no witnesses, no  5 records, no chance of prevailing. I mean the burden is  6 on the accuser. So if the witnesses are gone, the  7 records are gone, not much of a chance of that accuser  8 prevailing.</p> <p>9 MR. MARK REARDON: Respectfully disagree.</p> <p>10 SENATOR PETERSON: Well, Dr. Hamilton -- or  11 Professor Hamilton can address that because she's been  12 involved in a couple thousand of these. So I'll leave  13 that for her. But I think it's different in this case  14 because the average age of the victim is nine, average  15 age of which a child is abused is nine. You know, more  16 than half of all rapes in this country the victims are  17 under 12 years old. 20 percent of those are raped by  18 their own fathers. There are circumstances here that  19 are real different from the car accident where, you  20 know, there was a witness in the next car. These are  21 real different cases and I believe they require a real  22 different statute of limitations.</p> <p>23 MR. MARK REARDON: I agree.</p> <p>24 SENATOR PETERSON: These kids go through</p>
<p style="text-align: center;">Page 119</p> <p>1 In writing about the timing of filing civil lawsuits,  2 and specifically in writing about the statute of  3 limitations, the United States Supreme Court wrote  4 statutes of limitations protect parties from the  5 prosecution of stale claims - not bad claims or  6 meritless claims, but stale claims - when by the loss of  7 evidence from the death of some witnesses and the  8 imperfect recollection of others, or because of the  9 destruction of documents it might be impossible to  10 establish the truth and defend one's innocence.</p> <p>11 In conclusion -- I'm sorry, Senator, did  12 you have a question?</p> <p>13 SENATOR PETERSON: Yes. Go ahead.</p> <p>14 MR. MARK REARDON: In conclusion, for  15 Senate Bill 29 to be fair it must balance the  16 long-neglected rights of the innocent victims and the  17 rights of those who may have to defend their innocence  18 of these allegations of child abuse. Speaking from the  19 vantage point of the wrongly-accused institutions, I  20 urge you to act on Senate Bill 29 to pass it and to add  21 some modicum of protection for the institutions which  22 stand to be wrongly stung by the heinous phrase child  23 molester. Please vote to pass but amend Senate Bill 29.</p> <p>24 Senator Peterson.</p>	<p style="text-align: center;">Page 121</p> <p>1 life thinking somehow it was their fault or they were  2 threatened that if they told anybody that mommy or daddy  3 would be killed or, I mean, there is just some real  4 drastic, dramatic circumstances.</p> <p>5 MR. MARK REARDON: Completely agree.</p> <p>6 SENATOR PETERSON: I'll tell you something  7 else, Mr. Reardon, if we were talking about the flu in  8 this case and one in five kids in Delaware had it, we'd  9 be telling parents not to let the kids out of the house.  10 I mean it would be declared an epidemic. But this is  11 child sexual abuse. A lot of these people are older  12 now. They never had an opportunity to come forward.  13 They never had an opportunity for justice. They never  14 had any of that, and to seek to deny that, you know, I  15 look at a Rob Quill who is now 52 years old who was  16 molested by Francis DeLuca who was then moved to Holy  17 Spirit where he molested, who was then moved to St.  18 Matthews where he molested, the Diocese of Wilmington  19 not only allowed it, they actually enabled him. Every  20 parish was a new batch of victims.</p> <p>21 So whether you're 43 years old or 52, your  22 life is still ruined and not having the statute of  23 limitations goes to the Rob Quills and the other people  24 in this room, some of whom have not spoken yet. And</p>

<p style="text-align: right;">Page 122</p> <p>1 that's the reason. To say put some magical age 43 and    2 it cuts off, or last year Tony Flynn wanted age 30, it    3 was age of majority plus 12 years. I mean I don't know    4 where the magic numbers come from, 30 or 43. I'm saying    5 if you were injured and you can prove your case, you can    6 prove it was gross negligence, you ought to have your    7 day in court. You ought to be able to face the person    8 who killed your soul, who ruined your life, who drove    9 you to the brink of suicide and in some cases to    10 suicide. You know, this is -- I mean this is -- to me    11 this is just an incredibly serious issue.</p> <p>12         The false claim issue, there are a lot of    13 things that people get called in the newspaper with    14 their pictures, one of which is rapist. I mean I think    15 being called a child abuser or molester is right up    16 there with rapist but those names and pictures go out    17 there. People accused of murder, those names go out.    18 People accused of stealing from -- of embezzling from    19 their employer, their names and pictures go out there.    20 And I can tell you that Father Tom Doyle who testified    21 in the Senate he's been -- he's travelled around the    22 world actually, but here in the United States he's been    23 involved in over 2,000 of these cases personally. And    24 he was asked in the Senate how many false claims were</p>	<p style="text-align: right;">Page 124</p> <p>1 my client would stand to gain from those kind of    2 amendments to the Bill.</p> <p>3         Finally, you know, some people have asked,    4 you know, amend section A, and then amend section B, cut    5 off the retroactivity going backwards. The trial    6 lawyers want C amended and the insurance people, you    7 know, want B amended. By the time we get done amending    8 it we'll be left with a title and a number. Everybody    9 says I'm in favor of the Bill but take A out of there or    10 take B out of there or take C out of there. There won't    11 be anything left, and you're all here because you all    12 have clients and you all stand to lose. But you know    13 who lost the most in all this? The little kids. The    14 little kids who were molested and the adults who allowed    15 it to happen. They need to pay. And I say that as a    16 Catholic. They need to pay.</p> <p>17         REPRESENTATIVE VALIHURA: Do you want to    18 take a break?</p> <p>19         SENATOR PETERSON: Rob Quill is    20 unemployable because of what the Diocese of Wilmington    21 allowed to happen to him. He's unemployable and you    22 would have it that he would be entitled to not one red    23 cent. He can't work any more. He's been declared    24 totally disabled, and you would have him what, live on</p>
<p style="text-align: right;">Page 123</p> <p>1 there that you're aware of? Two. Two out of 2,000. I    2 don't think you kill the Bill because there might be    3 two. You know, I just don't.</p> <p>4         The issue of picking 1987 as the    5 retroactive date, we didn't pick 1987 as the retroactive    6 date. House Bill 66 attempted to remove the statute of    7 limitations going backwards, but two days after the    8 Governor signed the Bill the Supreme Court handed down a    9 decision in the California case that said you can't    10 impose it indefinitely retroactively, but we as a body    11 approved it unanimously, the Senate and the House    12 approved unanimously to try to lift the statute going    13 backwards. We lifted it going forwards forever. I    14 don't remember you being here to oppose that. I    15 remember you saying gee, it's not fair that 30 years    16 after the fact somebody can be accused of a molestation.    17 You know, I didn't tell see you then to oppose. But    18 when it comes to -- I know you represent the oblates in    19 the Eric Eden case. It seems a little self-serving. I    20 agree with Representative Hudson.</p> <p>21         MR. MARK REARDON: How is that, Senator?</p> <p>22         SENATOR PETERSON: Seems a little bit    23 self-serving that you would be here saying oh, no, you    24 chop it off at this end, chop it off at that end because</p>	<p style="text-align: right;">Page 125</p> <p>1 welfare? It's not his fault what happened to him.</p> <p>2         MR. MARK REARDON: Senator, I respectfully    3 disagree with your characterization of my assessment of    4 the Quill case. I have not abused anyone. You have not    5 abused anyone. And I'd like to talk to you about the    6 policy issue at stake here. And that is, how do we find    7 the appropriate way of seeking and providing justice for    8 the harms, the wrongs, the tragedies of years gone by?</p> <p>9         SENATOR PETERSON: We did that through    10 gross negligence which is defined in section B. Gross    11 negligence was that sorting-out process.</p> <p>12         MR. MARK REARDON: Gross negligence is a    13 jury issue. It will not be screened at the pre-trial    14 stage of the case. It will not be decided by a motion    15 to dismiss. It will not be decided by motion for    16 summary judgment. For the Boys Club and Girls Club or a    17 YMCA, for a Little League to have to defend themselves    18 through three years of litigation, unless they can find    19 a pro bono lawyer like me to do it for year after year    20 at no charge there will be no Little League or Boys    21 Club. The defense of ones innocence will cost tens, if    22 not hundreds, of thousands of dollars. It will only be    23 a jury issue.</p> <p>24         Senator, the issue of gross negligence</p>

<p style="text-align: right;">Page 126</p> <p>1 comes up in the Delaware courts rarely. It has been    2 defined in different ways, but here is the one constant:    3 It's determined to be an issue of fact. So it needs to    4 proceed to a jury of six people in the Federal Court or    5 12 people in the State Court and only after that    6 excruciating and expensive and anxiety-inflicting    7 process called litigation does the Boys Club or Naamans    8 Little League or a Girl Scout troop get to stand up on    9 the courthouse steps and say I told you we didn't harbor    10 someone we knew was wrong. I told you that we didn't --    11 we did everything that institutions were doing in 1973.</p> <p>12 REPRESENTATIVE VALIHURA: Representative    13 Lavelle has a statement.</p> <p>14 REPRESENTATIVE LAVELLE: Representative    15 Kowalko can go.</p> <p>16 REPRESENTATIVE VALIHURA: I'm sorry?</p> <p>17 REPRESENTATIVE LAVELLE: Representative    18 Kowalko was before me. I saw him waving.</p> <p>19 REPRESENTATIVE VALIHURA: I'm sorry. I    20 didn't see him. I apologize.</p> <p>21 REPRESENTATIVE KOWALKO: Yeah. I    22 appreciate your concerns about falsely accused, being    23 branded as child molesters, but the example -- one of    24 the examples you gave quite frankly confuses me. You</p>	<p style="text-align: right;">Page 128</p> <p>1 won't stand out as being anything unusual when the other    2 people start filing their lawsuits.</p> <p>3 So is it anecdotal? Yeah. Is it    4 illustrative of the concern that I have that it is more    5 difficult to defend ones innocence going into ancient    6 history? Absolutely yes.</p> <p>7 REPRESENTATIVE KOWALKO: Well, I don't    8 think the example that you gave is applicable to this    9 Bill, and, quite frankly, the fact that this Bill will    10 extend the timeframe for victims of a crime that are so    11 psychologically damaged, so psychologically impaired at    12 such a young age that it is in fairness that this Bill    13 should be in place as it is unamended. In fairness to    14 the victims. We're talking fairness to the victims    15 here. We're not talking fairness to the institutions.    16 We're not talking fairness or unfairness. That will be    17 determined by the courts and that's as it should be.</p> <p>18 MR. MARK REARDON: I couldn't agree with    19 you more and you hit the nail on the head when you said    20 these victims need to get justice for their crimes.    21 These aren't crimes we're trying to solve with Senate    22 Bill 29. These are civil lawsuits. I also agree with    23 you 100 percent when you say that these victims deserve    24 to confront their abuser. I agree with you, but not the</p>
<p style="text-align: right;">Page 127</p> <p>1 had talked about a prison guard I believe, that an    2 incarcerated victim was 18 years ago and threatened to    3 bring charges against that, so that would be within a    4 parameter of even any amended Bill, the 18 years. But    5 that could happen five years ago, somebody could do that    6 two years ago and make that accusation.</p> <p>7 MR. MARK REARDON: True.</p> <p>8 REPRESENTATIVE KOWALKO: And this Bill    9 would not prolong that agony of being accused as a child    10 molester. That's not the intention of this Bill. And I    11 certainly don't see that this enhances that possibility    12 of someone being branded unfairly as a child abuser.</p> <p>13 MR. MARK REARDON: Well, it does -- it does    14 widen the timeframe in which these cases can be brought.    15 If that same claim were brought this year, 2007, that    16 claim is presumably going to be barred by the two-year    17 statute of limitations unless the plaintiff, the    18 putative plaintiff can say memory suppression, some end    19 run around the two years, inherent unknowability. If    20 this statute -- if the statute of limitations is    21 extended retroactively by Senate Bill 29 that case can    22 come forward, and more to the point, the phone caller    23 says to me, fearful that he will be a named defendant,    24 this guy says he's just going to get in line, that he</p>	<p style="text-align: right;">Page 129</p> <p>1 institution, the Little League or the Boy Scout troop or    2 the YMCA day care camp that in 1973 wasn't doing the    3 kind of background checks that are routinely done now.    4 Representative Valihura pointed -- or Representative    5 Lavelle pointed out the classic example of his wife    6 needing a background check before she could chaperone a    7 school child on a class trip. That is the kind of    8 behavior that institutions thankfully have had to bring    9 themselves into the 21st century. It's happened over    10 the last five or ten years.</p> <p>11 You can not volunteer as an umpire at a    12 Little League without signing -- without a two-page    13 background check. You can not be a Boy Scout leader    14 without a thorough background check. You can't    15 volunteer at a YMCA camp for children without a thorough    16 background check. That is a good thing. That is a good    17 thing. Listen, there is a lot of things in our culture.    18 We can not defend the way things were done in the 50s,    19 the way things were done in the 40s. We can't defend    20 the way volunteers came and went from child youth    21 service organizations in the 50s, 60s, 70s and 80s, but    22 we can correct what -- we can correct the mistakes, the    23 shortfalls and protocols in the past and move forward    24 and thank God that has happened.</p>

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<p style="text-align: right;">Page 130</p> <p>1 REPRESENTATIVE KOWALKO: Well, we can 2 correct the shortfalls of making sure that our children 3 are protected in the future, but we certainly can't 4 excuse the shortfalls of the Diocese in not only 5 covering up but enabling these crimes to be perpetuated 6 -- perpetrated, I'm sorry.</p> <p>7 REPRESENTATIVE VALIHURA: Thank you. 8 Representative Lavelle.</p> <p>9 REPRESENTATIVE LABELLE: Not with the 10 witness. Thank you.</p> <p>11 REPRESENTATIVE VALIHURA: Okay. Do you 12 want a statement?</p> <p>13 REPRESENTATIVE LABELLE: After the witness 14 is excused.</p> <p>15 REPRESENTATIVE VALIHURA: Okay. Thank you. 16 Any other questions? If not, thank you very much, 17 appreciate Mr. Reardon. We -- I sense some angst among 18 my colleagues, so we're going to take a five-minute 19 break now, but we're going to let Representative Lavelle 20 make a comment before we go on to that five-minute break 21 and I apologize to Mr. Burke who will start when we come 22 back.</p> <p>23 REPRESENTATIVE LABELLE: Thank you, 24 Representative. My apologies to everyone. I am going</p>	<p style="text-align: right;">Page 132</p> <p>1 (Recess taken.)</p> <p>2 REPRESENTATIVE VALIHURA: All right. Thank 3 you very much everyone. I hope that was as helpful to 4 you as it was for the members of the committee. If we 5 could have Ed Burke to the podium, please. I also want 6 to take the time to recognize my colleague, Pam Maier, 7 who is here. Pam, thank you very much for attending. 8 She is passing notes. She is letting us know of her 9 interest in this and I appreciate her taking the time to 10 be here today.</p> <p>11 Mr. Burke.</p> <p>12 MR. ED BURKE: Mr. Chairperson, thank you 13 very much. Members of the committee, I thank you as 14 well. How about that, is that better? I come and speak 15 to you as a survivor representing the Voice of the 16 Faithful unofficially. Also with permission from 17 Survivors Network of Those Abused By Priests. I come as 18 that survivor from a member of a family of six, of those 19 six five of us were all abused and we also have next 20 generation -- well, I'll give you the breakdown. I have 21 a sister who was abused. I have two brothers and myself 22 that are living who were abused. My brother who is 23 deceased, I would be willing to lay down my life that he 24 was abused as well. I have three nephews that we know</p>
<p style="text-align: right;">Page 131</p> <p>1 to have to excuse myself. I am happy - and I know I 2 can't vote in absentia - but to vote to release the Bill 3 to the floor, important issue, should be discussed and I 4 will pursue House Amendment Number 2, and some of the 5 comments, and not to belabor this, but, again, I think 6 it's important on this discussion on this proposed 7 amendment to go back to 1987, Representative Hudson I 8 believe you indicated it would be unequal and unfair to 9 allow that, I would respectfully suggest that it would 10 be unequal and unfair to allow the State to hide behind 11 sovereign and limited immunity. Representative Kowalko 12 used words of fairness and things along that line, and 13 that to be fair, to be equal, to be responsible and 14 accountable is why I will pursue and happy, pleased to 15 get the Bill to the floor to have this debate take place 16 with all of our colleagues.</p> <p>17 Again I'm happy to release it. I know I 18 can't do that, Representative, but just so people know 19 I'm not ducking out. I wouldn't release it, but I'm 20 happy to do that. Thank you for giving me the 21 opportunity to make a comment.</p> <p>22 REPRESENTATIVE VALIHURA: Thank you. We 23 will take a -- it is now five minutes to four. We're 24 going to be back here at 4 o'clock.</p>	<p style="text-align: right;">Page 133</p> <p>1 of -- four nephews that we know of and four nieces that 2 I know of that were all abused. We have a suicide in 3 our family, and I dare -- well, he's not here, but I 4 guarantee you that her brothers' and sisters' memories 5 are not too hard to recall that that suicide took place.</p> <p>6 Repressed memories I'll stand here any day 7 and argue that they are not invalid. It was many years 8 after I was abused before I was able to bring it 9 forward. It came forward after my parents died and then 10 it really came forward when I had to go seek counseling. 11 I'm -- I was putting my wife through hell and so I had 12 to get help and when I did it came out that I was 13 abused.</p> <p>14 I'd just like to say before I get off that 15 I'd like to say a word about recordkeeping. Where my 16 abuse happened was actually in the Davenport Diocese. I 17 assure you the Roman Catholic Church as Father Doyle has 18 said has one of the best recordkeeping systems in the 19 world. When it came out that a priest by the name of 20 Janssen had been abusing from before he was ordained all 21 the way up through the seminary time and then through I 22 think it was like 48 years of priesthood, my family was 23 the type we had a lot of priests in our home. We had 24 Bishops in our home and we just were taught that they</p>

<p style="text-align: right;">Page 134</p> <p>1 were - in fact, the church used the word alter Christus,    2 other Christ. They could do no wrong. So when this    3 came out about Janssen and it got to - in Iowa they have    4 a little different thing on statute of limitations, so    5 some of these trials got to court - when it came out    6 about Janssen, here a great man, and I really think he    7 was a great man, Bishop Dingman from Iowa, when he was    8 the Chancellor in Davenport Diocese before he was made    9 the Bishop in Des Moines Diocese, came out in the    10 hearings of recordkeeping of 40 plus years where Ralph    11 Hayes, then Bishop, had Dingman put his hand on the    12 Bible and swear that he would never mention the abuse    13 that Janssen was doing to youth in any public setting or    14 any other parish, that's on record, if you want to go    15 look it up in the Davenport Scott County Courthouse in    16 Davenport. You can find it. They do have good records.</p> <p>17 You know, Shakespeare I think it was - and    18 I'm not a great literarian here at all - but I think he    19 said somewhere "Me think thou doth protest too much."    20 Well, if you look where this comes up, the statute of    21 limitations, I believe it's 18 different states, who is    22 the number one people protesting? It's the Roman    23 Catholic Church. Because they do have the records.    24 They're not as scared about the money as they are that</p>	<p style="text-align: right;">Page 136</p> <p>1 the VIP, stood for very important parishioners, right?    2 Well, hallelujah, guess what, you're looking at a VIP in    3 the Wilmington Diocese. Whoopee, right? So my picture    4 and the great story of what my wife and I had done in    5 St. John's Holy Angels Parish was told in there. It    6 just so happened at the same time well, they called and    7 I went in and, you know, took the picture. So I was    8 known as very important parishioner and it listed some    9 of the things that we did. My wife and I, I have been a    10 eucharistic minister for about 15 years. My wife had    11 taught CCD. Well, that's what it was called then. I    12 had started a greeters committee in the parish. We took    13 over an organization that had three members in it. We    14 filled it to 50 active members. We did that for 18    15 years and all this was told in the dialogue that we had    16 done, you know, some fairly good work.</p> <p>17 Now, fast forward to 2007, right? About    18 two months ago I got a phone call from a man, I don't    19 know how my name is out there but it is, and I am kind    20 of glad it is and people call me who say they were    21 abused. And I talk to them and I counsel them the best    22 I can. And so a few months ago I got this phone call    23 and this man said after we talked awhile he said I got    24 to tell you something. I said what's that? And he said</p>
<p style="text-align: right;">Page 135</p> <p>1 these records will come out. And they suffer from a    2 sickness and almost an evil of clericalism. They will    3 go to no -- the limits are so far out there to protect    4 the ordained and they will go and go and go to protect    5 people from that.</p> <p>6 The other thing that really, really was    7 hard for me was after I moved out east and my children    8 were going to Holy Angel School in Newark, Delaware, and    9 if any of you read the DA's report from Philadelphia,    10 here I was abused, had really repressed it, if you had    11 asked me was I abused I would say no and I would be    12 telling you what I thought was the truth, right? Then    13 when I see the Philadelphia DA's report I had four    14 children at Holy Angel School at Newark, Delaware, when    15 they put McGovern in there who is a known predator,    16 transferred him down from Philadelphia to put him    17 temporarily teaching and acting in parishes in the    18 Diocese of Wilmington. And then one night he's there,    19 one night he's there and the next morning he's gone. I    20 get a little suspicious about that. My children say no    21 problem. I hope to God they're telling me the truth.</p> <p>22 I'd like to do just a quick flashback with    23 you. When all this started in 2002 the Dialogue, which    24 is the Wilmington Diocese newspaper, had a series called</p>	<p style="text-align: right;">Page 137</p> <p>1 I think I did you a disservice. I said well, how did    2 you do that? So he said I couldn't get ahold of you so    3 I thought surely the Diocese has your phone number,    4 right? So he called the Wilmington Diocese to get my    5 phone number and he was sent ahead to one of the right    6 or left arm of the Bishop. Well, I know which one it    7 was but I'm not going to tell you. And as they talked    8 and he tells him that he wants to call me, and so he    9 says why and they go through the whole bit. And then he    10 said I don't know if you know it or not but you are    11 considered an enemy of the church. And so I said well,    12 how did they say that? And he said well, they know that    13 you were one of the ones that started the Voice of the    14 Faithful and therefore you're an enemy of the church.</p> <p>15 And so in five short years I went from a    16 very important parishioner to I now stand before you as    17 the public enemy of the church of Wilmington, Delaware.    18 I'm kind of proud of that. In fact, I'm a little more    19 proud of that than I am of being a VIP.</p> <p>20 I think the people that talked earlier    21 today really showed you this is a societal problem. And    22 I think there is so much to be gained. You know, when    23 they talk about people coming out and false memories and    24 everything, I go back to what Senator Karen said that if</p>

35 (Pages 134 to 137)

<p style="text-align: right;">Page 138</p> <p>1 the person has to prove it.</p> <p>2 The other thing that I noticed is the</p> <p>3 Representative asked the question and I think either</p> <p>4 Mr. Flynn or Mr. Reardon said the great numbers of them</p> <p>5 come forward. You know why a lot of them come out of</p> <p>6 the woodwork? Because when they do a bankruptcy, I'll</p> <p>7 tell you this from experience, I don't have to have say</p> <p>8 I'm Ed Burke. I can do it as a John Doe. That's why</p> <p>9 they come forward. See, when I got the letter from</p> <p>10 Davenport, Iowa that said they claimed bankruptcy then</p> <p>11 there is a bankruptcy committee formed, and some names</p> <p>12 appear in every bankruptcy throughout the country. They</p> <p>13 never see the light of court. The bankruptcy committee</p> <p>14 throws them out right away. They had one guy his name</p> <p>15 appears every bankruptcy throughout the Diocese -- or</p> <p>16 throughout the United States that the Catholic Diocese</p> <p>17 have.</p> <p>18 But there are a lot of people who just</p> <p>19 don't have, you know, I don't know, it's not fun to come</p> <p>20 up here and I understand why they don't want to, but</p> <p>21 they don't want to identify themselves. But were they</p> <p>22 abused? Yeah, they were abused. I got a brother that</p> <p>23 way. He'll never -- he'll never publicly admit it, you</p> <p>24 know. So that's why the numbers grew so much in the</p>	<p style="text-align: right;">Page 140</p> <p>1 or to be divided or 100 million to be divided among 48,</p> <p>2 whatever it is, also in there is a list of 15 things</p> <p>3 that Bishop Skylstad had to agree to or they wouldn't</p> <p>4 have settled it, and you know what the number one was</p> <p>5 thing, go to the parishes where the guys abused kids and</p> <p>6 say you're sorry to that parish and to those people and</p> <p>7 identify the priest. They don't want to identify. They</p> <p>8 absolutely do not want to identify. It's really not the</p> <p>9 money. It's the names. They don't want to look like</p> <p>10 what they have done is real and it is real.</p> <p>11 So I thank you for your time. If I have</p> <p>12 any time left over I'd be happy to give it to Paula</p> <p>13 Weldon or to Richard Reissmann. Thank you very much.</p> <p>14 REPRESENTATIVE VALIHURA: Thank you very</p> <p>15 much. I appreciate it. At this point we're going into</p> <p>16 the time limited period. I will give the names of those</p> <p>17 who are on our list in this -- in the order in which</p> <p>18 we'll ask them up. Steve Abrams, Father Richard</p> <p>19 Reissmann, Jack Keating, Shawn Dougherty, Paula Weldon</p> <p>20 and Dr. James Walsh.</p> <p>21 Steve Abrams. I understand you're</p> <p>22 representing an organization?</p> <p>23 MR. STEVE ABRAMS: I'm representing the</p> <p>24 coalition --</p>
<p style="text-align: right;">Page 139</p> <p>1 case that you referred to. They came out as John Does.</p> <p>2 Some of them didn't identify their name.</p> <p>3 When I went public, my brothers and I went</p> <p>4 public in a letter in Davenport, Iowa, a number of years</p> <p>5 ago -- well, not that many years ago, '03. We went out</p> <p>6 and met with the Bishop out there. Very interesting to</p> <p>7 me, the very things that we suggested to Bishop</p> <p>8 Franklin, he said if you want justice -- because he said</p> <p>9 what do you want? We said the only thing we want is</p> <p>10 justice. We don't want it for ourselves. We agreed</p> <p>11 that we would never -- not never, we agreed that at that</p> <p>12 time we would not sue the Diocese out there. And he</p> <p>13 says, well, how do I get it? We said for one thing you</p> <p>14 know because of your records where every pedophile</p> <p>15 priest served. Go to those parishes, say you're sorry.</p> <p>16 Blah, blah, blah. We spelled out about five steps for</p> <p>17 them. And that was one was to visit the parishes. You</p> <p>18 know how many parishes he visited? One, because a</p> <p>19 parish council was going to write a letter to the press</p> <p>20 and he came to try and suppress that letter. It's the</p> <p>21 only parish he ever visited. He since retired.</p> <p>22 When Spokane, if you look, and I'm positive</p> <p>23 of this, when Spokane agreed with that bankruptcy</p> <p>24 settlement or whatever it was he said today, 48 million</p>	<p style="text-align: right;">Page 141</p> <p>1 REPRESENTATIVE VALIHURA: Okay. Could you</p> <p>2 pull down the microphone closer to your --</p> <p>3 MR. STEVE ABRAMS: Okay. I am representing</p> <p>4 the Coalition to Pass Senate Bill SB 29.</p> <p>5 REPRESENTATIVE VALIHURA: So you'll have</p> <p>6 five minutes.</p> <p>7 MR. STEVE ABRAMS: Okay. Thank you. Mr.</p> <p>8 Chairman, representatives and Senator, my name is Steven</p> <p>9 Abrams. I'm 43 years old. I live in Los Angeles and I</p> <p>10 work as a researcher in network television. I am</p> <p>11 appearing on behalf of the Coalition to Pass Senate Bill</p> <p>12 SB 29. I have come here to Delaware to testify in</p> <p>13 support of the legislation. I believe my experience in</p> <p>14 California is an example of the success that this Bill</p> <p>15 will have here in Delaware.</p> <p>16 I was -- I was abused by a child</p> <p>17 psychiatrist my parents sent me to when I was 12 years</p> <p>18 old. I have a picture of myself here. The doctor who</p> <p>19 abused me is Dr. William Ayres. He is a past president</p> <p>20 of the American Academy of Child and Adolescent</p> <p>21 Psychiatry. He was extremely well regarded in the</p> <p>22 psychiatry world for decades and was even the host of a</p> <p>23 sex education television series called "The Time of Your</p> <p>24 Life" which was broadcast on PBS in the late 1960s.</p>

<p style="text-align: right;">Page 142</p> <p>1        However, we now know that for decades Dr.    2 Ayres molested dozens and dozens of boys. Under the    3 guise of giving physical exams Dr. Ayres contrived to    4 touch and fondle the genitals of boys. He applied    5 lotion to my penis to treat itching during several    6 visits to his office. I was shocked. I couldn't    7 believe he was touching me in this way. I felt ashamed    8 and guilty that I had trusted what Ayres was doing was    9 medically warranted. After all we're taught that    10 doctors, like policemen, priests, teachers, et cetera,    11 are there to help you. It took years before I became    12 mature enough to realize that there was no way that this    13 could be a legitimate physical exam or medical    14 procedure.</p> <p>15        I was ashamed of what happened and I just    16 tried to forget about it and move on. However, I took    17 away from the experience with Ayres a deep mistrust of    18 professionals in the so-called healing fields. I didn't    19 realize until years later that what Ayres did to me had    20 a devastating impact on every decision I made and every    21 relationship I had. It was hurting me in ways    22 indescribable. The best way to describe it is to say    23 that everything in my life has been haunted by Ayres.    24 It took until I was 27 to tell anyone about what</p>	<p style="text-align: right;">Page 144</p> <p>1        other victims. Eventually in 2003 the police said they    2 wouldn't be able to prosecute Ayres as a result of the    3 Supreme Court which reversed California's extension of    4 the statute of limitations for criminal prosecution of    5 child sex abuse cases. I was disappointed.    6                    (Whereupon Tape 2, Side 2 ended. The    7 following is Tape 3, Side 1:)</p> <p>8                    MR. STEVE ABRAMS: -- to face up to what he    9 had done to me and so many other boys. Then I learned    10 that California had a one-year window for victims to    11 bring civil cases. I weighed the pros and cons of    12 trying to bring a case against Ayres in the civil courts    13 and decided it would be good to do so, even if it would    14 be painful and embarrassing for me to bring charges it    15 might protect some other children from him. He was    16 still practicing psychiatry at that time. I hoped that    17 filing the civil case would help to hold him accountable    18 for his actions in a way to make his name public and    19 warn other kids about what he was doing.</p> <p>20        After I filed my civil cases reporters told    21 about it in several California newspapers. It was in    22 the news that Dr. Ayres was being sued. I couldn't    23 believe it at first but it was true, as a result of the    24 press reports Ayres was forced to step down from his</p>
<p style="text-align: right;">Page 143</p> <p>1        happened. Ten years later in 2002 I mustered enough    2 courage and told a friend about my abuse. She had told    3 me that she had been abused as a youngster also and she    4 decided to do some research on this Dr. Ayres and found    5 out that he was still in practice. She contacted the    6 San Mateo Police Department and learned that they had    7 received several complaints about Dr. Ayres but since    8 Ayres evaluated delinquent boys for the San Mateo County    9 court system the police did not mount an investigation.    10 Most of those making the accusations were incarcerated,    11 you know, former delinquent kids, uncooperative and were    12 not considered trustworthy witnesses.</p> <p>13        I have since learned that predators pick    14 their victims carefully, often choosing children who are    15 already vulnerable and with few resources. They're    16 careful to choose the kids least likely to tell and even    17 less likely to be believed.</p> <p>18        With my friend's support I decided to    19 report my abuse to the police. They took the case and    20 opened an investigation. I found it extremely painful    21 to disclose what happened to me, yet at the same time I    22 was reassured that they believed me and thought I was    23 credible. The police tried to put together a criminal    24 case with the information they had received from me and</p>	<p style="text-align: right;">Page 145</p> <p>1        practice. I was happy to think he couldn't abuse any    2 more kids, at least for the time being, but then my    3 worst fears were realized: Ayres had been abusing other    4 boys, lots of other boys until very recently. Other    5 victims of Ayres had heard the press reports about me    6 and came forward with their own stories of abuse by him.    7                    It was great to learn that I wasn't alone,    8 but at the same time I felt very sad that so many others    9 had been abused. The new victims coming forward were    10 sent to the police who reopened their investigation of    11 Dr. Ayres. The police had enough information and    12 victims to get a search warrant and seize Dr. Ayres's    13 records. The detectives and investigators got the    14 medical records and began contacting former patients.    15 Before long they found several who were young enough and    16 had been abused recently enough so that the criminal    17 statute would apply.</p> <p>18        Just eight weeks ago on April 5th, 2007 Dr.    19 Ayres was arrested. It still amazes me that this    20 happened. Because I filed my lawsuit using the window,    21 the civil window in California Dr. Ayres is now facing    22 21 counts of lewd and lascivious acts against children    23 younger than 14. Ayres is very wealthy and he had no    24 problem of posting his bail of \$750,000. He was freed</p>

<p style="text-align: center;">Page 146</p> <p>1 after a weekend in the San Mateo County Jail. To date 2 approximately 40 accusers have come forward saying Ayres 3 molested them.</p> <p>4 None of this would have happened were it 5 not for the window allowing civil statutes in 6 California. This is only possible because California 7 lawmakers did what we are asking you to do here in 8 Delaware. They recognized that child victims of sexual 9 abuse can't come forward until well into adulthood and 10 they needed a break. They needed a civil window in 11 California to allow victims to sue their perpetrators.</p> <p>12 My case is one of many. In California we learned that 13 when a perpetrator's name is made public other victims 14 feel safe enough to come forward. Because of the 15 statute of limitations reform and the civil window in 16 California one dangerous man I know is facing criminal 17 charges and children are safer.</p> <p>18 As adults today we'll never get our 19 innocence back and we know we will never get back the 20 years lost in silence, shame and secrecy, but it is very 21 healing to know that we have protected kids from harm. 22 I am so grateful to know that Dr. Ayres isn't able to 23 keep abusing kids as a psychiatrist in San Mateo, 24 California.</p>	<p style="text-align: center;">Page 148</p> <p>1 MR. STEVE ABRAMS: Not at all. No. No. 2 No. No.</p> <p>3 REPRESENTATIVE HUDSON: You were just -- 4 MR. STEVE ABRAMS: No. No. I just I 5 benefited from the -- after the criminal case against 6 this doctor had to be abandoned because the Supreme 7 Court had, you know, mooted California's extension of 8 criminal statute I was able to go ahead and take him to 9 civil court and expose him and it has now led to 10 criminal charges against him.</p> <p>11 REPRESENTATIVE HUDSON: And we talked today 12 about evidence and diaries and that sort of thing. 13 Obviously you were able to work through your side to 14 prove your case.</p> <p>15 MR. STEVE ABRAMS: Well, the fact that -- 16 the fact that dozens of other former patients of this 17 guy came forward with very similar stories provides 18 corroboration. Also, the fact that he had first denied 19 having seen me as a patient and then during his 20 deposition he admitted to - although he contradicted 21 himself a couple times - to giving physical exams to 22 patients. When the police seized his records they found 23 there was no -- no notations of giving physical exams 24 and there is also -- there are no colleagues of this guy</p>
<p style="text-align: center;">Page 147</p> <p>1 I came here to Delaware to tell you my 2 story in the hopes that you will pass the same kind of 3 legislation here as I was able to use in California so 4 predators can be exposed and kids can be healed. Thank 5 you for considering my testimony and please let me know 6 if you have any questions. I would be glad to answer 7 them for you.</p> <p>8 REPRESENTATIVE VALIHURA: Thank you. Very 9 riveting testimony and I understand how difficult it is 10 for you to come here and to do that and to tell us about 11 a personal situation in your life. You're to be 12 commended for all your actions. I can tell that it was 13 difficult for you to make that decision to come forward 14 and clearly your actions have benefited the citizens of 15 California and countless other children who were about 16 to be preyed upon by this individual.</p> <p>17 Members of the committee have any 18 questions? If not -- yes. Representative Hudson.</p> <p>19 REPRESENTATIVE HUDSON: Just a question. 20 You really then only knew about the rule change in 21 California by hearing it in the -- or hearing it from 22 friends or reading it in the newspaper? You weren't 23 involved in the legislation? You weren't part of it at 24 all?</p>	<p style="text-align: center;">Page 149</p> <p>1 that say it is permissible for a child psychiatrist to 2 be doing full body physical exams on children sent to 3 him for counseling. That's something that a 4 pediatrician would do. A psychiatrist has no reason to 5 be taking down a child's pants, and this is something 6 that this Dr. Ayres only did to boys. No female patient 7 of his has ever reported to being subjected to physical 8 exams.</p> <p>9 REPRESENTATIVE HUDSON: And you didn't tell 10 your parents?</p> <p>11 MR. STEVE ABRAMS: No, of course not. No, 12 I mean, I was just ashamed of it. In my mind when I was 13 12 years old I thought this must be like normal, this 14 must be what's proper because he's a doctor, you know, 15 but I mean as I grew older I realized I had been abused. 16 You know, you try to make things normal to yourself so 17 you can live with yourself and I certainly wasn't going 18 to tell my parents about it. I felt guilty at the time 19 because I felt like I had allowed it. For me to even 20 consider it to have been wrong would mean that I had 21 allowed it and I would feel guilty about it. So it took 22 awhile for me to realize what was really going on and as 23 it did it just kind of soured in my mind, and I realized 24 I had been abused by this guy, but until I went and</p>

<p style="text-align: right;">Page 150</p> <p>1 reported to the police and found that he had done, you 2 know, he had done this same thing to other kids I didn't 3 realize that, yeah, he's a serial abuser. This is how 4 these people operate.</p> <p>5 REPRESENTATIVE HUDSON: So you were able 6 because of your case to see to it that he had a civil 7 charge as well as a criminal charge?</p> <p>8 MR. STEVE ABRAMS: Right. Yeah.</p> <p>9 REPRESENTATIVE HUDSON: So really you are 10 an excellent case for this Bill because it exposed him?</p> <p>11 MR. STEVE ABRAMS: Yes.</p> <p>12 REPRESENTATIVE HUDSON: Many people felt 13 better because they were able to come out and join you.</p> <p>14 MR. STEVE ABRAMS: That's right. He would 15 have gotten away scott free probably if I hadn't been 16 able to take him to civil court.</p> <p>17 REPRESENTATIVE HUDSON: Did you start your 18 case at the beginning of the -- right away when the 19 one-year cycle was opened?</p> <p>20 MR. STEVE ABRAMS: Yeah, I did start it 21 right away.</p> <p>22 REPRESENTATIVE HUDSON: And you used a 23 California attorney?</p> <p>24 MR. STEVE ABRAMS: Yes.</p>	<p style="text-align: right;">Page 152</p> <p>1 worst thing for me was he was evaluating delinquent kids 2 for the court system in San Mateo, you know. They sent 3 him kids.</p> <p>4 SENATOR PETERSON: So about 40 years?</p> <p>5 MR. STEVE ABRAMS: About 40 years.</p> <p>6 SENATOR PETERSON: Thank you.</p> <p>7 REPRESENTATIVE VALIHURA: Any questions?</p> <p>8 If not thank you so much for being here today. We 9 appreciate your testimony and please have a safe trip 10 back to California.</p> <p>11 MR. STEVE ABRAMS: Thank you.</p> <p>12 REPRESENTATIVE VALIHURA: Thank you.</p> <p>13 Father Richard Reissmann.</p> <p>14 Good afternoon, Father.</p> <p>15 FATHER RICHARD REISSMANN: Good afternoon.</p> <p>16 My name is Father Richard Reissmann, a priest of the 17 Diocese of Wilmington for the past 44 years. I 18 represent no one but myself and my conscience and I am 19 speaking on behalf of Senate Bill 29. I must confess 20 also that I am a church lawyer, a canon lawyer. I 21 received my degree from the Catholic University of 22 America. I always had some concern about some of our 23 legal principles, but after listening here to some legal 24 concerns I must confess I might not trust the judicial</p>
<p style="text-align: right;">Page 151</p> <p>1 REPRESENTATIVE HUDSON: Thank you.</p> <p>2 REPRESENTATIVE VALIHURA: Did you sue any 3 other entity or just the doctor?</p> <p>4 MR. STEVE ABRAMS: No, it was -- it 5 happened, the abuse happened in 1976 and '77. This 6 doctor, like he did try to sue his own medical practice 7 at the time. He had partners and he was suing them and 8 their insurance company trying to recover the settlement 9 that he paid to me before trial, but, you know, that 10 didn't work out for him, but, yeah, I was just suing Dr. 11 Ayres.</p> <p>12 REPRESENTATIVE VALIHURA: And you wanted to 13 expose him, is that right?</p> <p>14 MR. STEVE ABRAMS: Yes.</p> <p>15 REPRESENTATIVE VALIHURA: Thank you. 16 Senator Peterson.</p> <p>17 SENATOR PETERSON: Just a quick question. 18 Over what period of time did he practice psychiatry?</p> <p>19 MR. STEVE ABRAMS: He had been a practicing 20 psychiatrist since the early 60s and he moved to 21 California about 1964, '65, and he had been practicing 22 there until the 90s, until like the mid 90s. He was the 23 president of the Association of Child Psychiatry and he, 24 you know, was pretty respected in his field, and the</p>	<p style="text-align: right;">Page 153</p> <p>1 system in this country. Some of the things raised were 2 remarkable.</p> <p>3 And I would like to say that the present 4 law with the two-year statute of limitations for sexual 5 abuse crimes is, in fact, an unjust law. Does anyone 6 here truly believe that small children can have some 7 redress within this framed time? These children are 8 manipulated, emotionally fractured and often threatened 9 by the predators. Predators can feel secure because 10 they can control their victims. Is it possible that 11 even these children can understand what is going on? 12 Does anyone believe that a seven, eight, nine year old 13 or even a young teenager would speak out within two 14 years against a parent, relative, friend, clergy person 15 or one who has responsibility for them? You know that 16 if they did we would be demanding of them that they have 17 more courage than most adults possess.</p> <p>18 What do we live by but the laissez-faire 19 attitude such as don't rock the boat, or what will the 20 neighbors think, or nobody will believe you, or you'll 21 be a curiosity to others. There is not much to be 22 gained for exposing an abuser because unfortunately the 23 abused, the abused will only be abused again.</p> <p>24 It is said that nearly 25 percent of young</p>

<p style="text-align: center;">Page 154</p> <p>1 children have been sexually abused. We must give the 2 courageous ones the opportunity to make their case and 3 Senate Bill 29 does just that. It looks to the past and 4 to the future. As a result, more abusers will come to 5 light. We will be able to better protect society and 6 institutions will be accountable for any gross 7 negligence applying to sexual abuse.</p> <p>8 If we as a society place money, power, or 9 privilege as superseding justice then we are a society 10 that has become tepid, weak and immoral. I beg you to 11 vote for the passage of SB 29 without any amendments. 12 Thank you very much.</p> <p>13 REPRESENTATIVE VALIHURA: Thank you, 14 Father. Questions? Mr. Keating.</p> <p>15 MR. JACK KEATING: My name is Jack Keating 16 and I'm a resident of New Castle County, Delaware. It 17 is said as human beings --</p> <p>18 REPRESENTATIVE VALIHURA: Mr. Keating, 19 could you move the microphone a little closer to you? 20 Thank you.</p> <p>21 MR. JACK KEATING: It is said as human 22 beings our secrets die in the light of exposure. As a 23 victim of childhood sexual abuse from the age of five to 24 the age of 14 casting light on an extremely painful,</p>	<p style="text-align: center;">Page 156</p> <p>1 As an adult victim of childhood sexual 2 abuse I can tell you that for the past 12 years I 3 revisited my fears over and over again. I am proud to 4 stand before you today that after much medical 5 treatment, 12-step recovery and putting a painful past 6 -- a painful past behind me, it is possible to be done. 7 With passage of Senate Bill 29 I can succeed in being a 8 sexual abuse victim no more. Let us help other victims 9 to achieve what I have.</p> <p>10 I never thought 12 years ago that when I 11 met my psychiatrist for the first time and he asked me 12 what I wanted of him and I told him I just want to be 13 comfortable in my own skin, that I would be repeating 14 that statement today in the Delaware House hearings on 15 sexual abuse. But after extensive effort, much 16 patience, and financial burden that I just literally 17 thought I wouldn't be able to get through, I am 18 comfortable in my own skin. And as a matter of fact, 19 I'm the happiest I have been in my whole life.</p> <p>20 Please, our Delaware leaders, walk through 21 the fear factor promoted in these hearings and do the 22 courageous thing, vote yes on Senate Bill 29 without any 23 amendments. Please, again, you have questioned church, 24 business and organization on their statements made, be</p>
<p style="text-align: center;">Page 155</p> <p>1 embarrassing past is a mental hurdle to overcome that 2 most sexual abuse victims will never overcome. For most 3 victims their abusers is well known to them, family 4 incest, or close friend to the family, or in a circle of 5 friends with them. After finding my abuser dead when I 6 was at the age of 41 almost destroyed by alcoholism and 7 not capable of existing comfortably in any respect I 8 stepped forward about my past.</p> <p>9 Standing here today with you our State 10 leaders and organizations that oppose this Bill as 11 written, the Catholic Church, representatives of, and 12 the press takes great strength. To come forward as a 13 victim of childhood sexual abuse takes courage. A 14 courage I never knew I could have. Most people believe 15 that the meaning of courage is walking through our fears 16 and accepting the outcome no matter what. I know that 17 the meaning of courage is the willingness to walk 18 through our fears no matter what the outcome.</p> <p>19 For those here today opposing the Bill as 20 written, are victims of fear -- I'm sorry, are victims 21 of the fear factor, or, they are here to promote the 22 fear factor in this legislative body. No matter why we 23 are here today, failing to adopt this Bill as written is 24 a failure to be a responsible citizen in our society.</p>	<p style="text-align: center;">Page 157</p> <p>1 courageous now and ask me questions about my past. 2 Thank you.</p> <p>3 REPRESENTATIVE VALIHURA: Thank you. 4 Members of the committee, do you have any questions? 5 Representative Hudson.</p> <p>6 REPRESENTATIVE HUDSON: I just wanted to 7 thank you because I -- seemed to me like you were having 8 a hard time and I appreciate your comments. Thank you.</p> <p>9 MR. JACK KEATING: Thank you.</p> <p>10 REPRESENTATIVE VALIHURA: I, too, want to 11 thank you for your very poignant comments and I 12 understand how difficult it is to get up here. You 13 know, I for the life of me could never do what you have 14 done today and, you know, you're to be commended to come 15 forward and tell us your story and we do very much 16 appreciate it. It's very helpful to the committee. 17 Thank you.</p> <p>18 Shawn Dougherty? Okay. Paula Weldon.</p> <p>19 MS. PAULA WELDON: Good afternoon, 20 everybody, Mr. Chairman, members of the committee, 21 Senator Peterson. I'm Dr. Paula Weldon and I am 22 supporting this legislation, both as a specialist in 23 organizational behavior and as the former vice-president 24 of human resources for the YMCA of Delaware. Delaware</p>

40 (Pages 154 to 157)

<p style="text-align: right;">Page 158</p> <p>1 is one of the State's largest youth-serving    2 organizations. It's a charitable organization. It is    3 my view and the view of the organization that I served    4 and continue to serve, that child safety should be the    5 number one priority of all youth-serving entities.    6 Protecting children from sexual abuse is a critical    7 accountability of all of those, all of us who operate    8 within the public trust and this means YMCAs.    9 Mr. Reardon, I thank you for speaking to the YMCA.    10 Mr. Reardon does not represent the YMCA. I just wanted    11 to clarify that. Boys and Girls Clubs, you heard    12 Mr. Krupanski, day care centers, scout troops, schools,    13 churches, just to name a few.</p> <p>14 I am going to skip over the hundred-year    15 history of the YMCA and its care for children and kind    16 of jump right to the point. Agencies that serve    17 children must hold themselves to high standards of    18 accountability, especially regarding the chance for    19 child predation, and nonprofit institutions most of all.    20 Because most, if not all of those institutions, are    21 accepting charitable donations from you folks to support    22 our work from the public of Delaware and many of us are    23 also receiving state and federal funding. We're making    24 our case and doing our good work on your dollars. I</p>	<p style="text-align: right;">Page 160</p> <p>1 I contend that those organizations that    2 have assertively made child protection part of their    3 youth-serving culture do not need to fear this    4 legislation. But an organization that in its past has    5 been indifferent to or complicit in allowing sexual    6 abuse by its employees may well have a problem with this    7 Bill, but ultimately has to be held accountable.    8 I would like to also recall what Chairman    9 Valihura mentioned. I think this is a very important    10 point. For cases that go back some number of years, if,    11 again, looking at the body of civil law and when we look    12 at old cases, first of all, the courts are going to view    13 what occurred within the organization relative to the    14 standard of care at the time. Today high level of    15 responsibility around criminal background checks, a    16 whole different level of even an employment application    17 than you would have found 50 years ago. You might not    18 even have had employment applications. So the court    19 applying the 2007 standard to a common body of corporate    20 practice in 1967 wouldn't be appropriate. Same thing    21 happens as you can see in sexual harassment matters.    22 I think there is the possibility or the    23 reality of organizational bankruptcy, but in all candor,    24 having worked in a nonprofit for many years, I think we</p>
<p style="text-align: right;">Page 159</p> <p>1 think that holds us to an extremely high standard.    2 Organizations should not shrink from    3 accountability for their employees' behavior. However,    4 let me put on another house as a specialist in    5 organizational behavior, and just mention that if you    6 look at the history of how corporations change and when    7 they change and under what circumstances they change,    8 the incentive, the catalyst that promotes the change is    9 usually financial pressure of some kind.    10 The civil courts have established a    11 standard for organizational accountability which is    12 demonstrated in cases which I'm sure many of you are    13 familiar with involving sexual harassment, an area that    14 I dealt a lot with in my profession. And the standard    15 was did the organization know or should it have known    16 what was taking place under the aegis of its corporate    17 umbrella. That's the standard. SB 29 actually has a    18 much more conservative standard because its standard for    19 organizational accountability is gross negligence,    20 which, as Senator Peterson spoke to, means that there is    21 a knowing and complicit part on the organization if    22 there is child predation going on and it's almost being    23 - I use the words casually facilitated by the    24 organization.</p>	<p style="text-align: right;">Page 161</p> <p>1 are more at risk of moral and ethical bankruptcy if    2 we're not supporting this fully and unamended.    3 As for the arguments - and I am going to    4 mention a couple of them - which have been perpetrated    5 primarily by lobbyists for the Roman Catholic Church    6 about the difficulties of the discovery process for    7 claims of past abuse, I think these are blatantly    8 misleading. And perhaps Mr. Flynn and I can step out in    9 the hall and argue that, but I'd like to present my side    10 on that particular question. Last year Mr. Flynn,    11 speaking for the Diocese of Wilmington stated, it's    12 impossible to investigate such claims. To do so is    13 denial of due process to the Defendants and the loss of    14 evidence will prevent the courts from fairly trying    15 these cases.    16 I ask, please, that you just be alert to    17 some of the fallacies that are in this argument. First,    18 we have discussed, I'll just reiterate, if a claim is    19 impossible to investigate or lacks sufficient evidence,    20 including that documentary evidence that I think worries    21 a lot of nonprofits, oh, my God, I don't have records    22 that go back 30 years. Well, that's probably true, and    23 if you're following standard record retention schedules    24 you aren't going to have records going back that far.</p>

<p style="text-align: center;">Page 162</p> <p>1 There is another word for that which is called lack of    2 evidence, because if you have simply an assertion and a    3 denial and there is no supporting evidence this case is    4 not going to get in to the inside of a courtroom as I'm    5 sure those of you who are legally trained, formally    6 legally trained know.</p> <p>7 Merely investigating a claim of wrongdoing    8 does not - and I would certainly allow myself to be    9 corrected on this point - in and of itself deny due    10 process to any individual or organization. So merely    11 conducting an investigation I fail to see how under    12 American jurisprudence this would deny due process to    13 anybody.</p> <p>14 And, further, it was claimed by Mr. Flynn    15 last year that the court - and certainly implied in a    16 variety of ways - that the courts would rule unfairly in    17 the absence of evidence and I wonder where this comes    18 from. The implication being that the court would    19 proceed to trial or to summary judgment in favor of a    20 plaintiff even in the absence of sufficient evidence to    21 rule in favor of the plaintiff. So we either have to    22 draw the conclusion that our court system in Delaware    23 and at the federal level is so lame that it can't make    24 competent judgements about the burden of evidence or</p>	<p style="text-align: center;">Page 164</p> <p>1 nonprofits.</p> <p>2 There are a couple of facts related to this    3 that I'd like to just share. Assume that the insurance    4 coverage at the time of the abuse, whenever that may    5 have been, was on a claims-made basis. The insurance    6 people in the room I know will know what that means.    7 But basically if that was the case any claim brought    8 forward today, if the insurance company is worried about    9 it that's just not going to be covered because the    10 claims-made basis is not going to countenance a claim    11 made today for something that happened 20 years ago.    12 If an insurance company's coverage or if an    13 organization has insurance coverage on an occurrence    14 basis, in other words, here is this wrongdoing, this    15 abuse that occurred 30 years ago and I have insurance    16 coverage today, or I was insured at that time on an    17 occurrence basis, then the insurance company has to    18 cover that claim or they're going to fight it out in    19 court probably as to whether the insurance company is    20 going to cover that claim.</p> <p>21 But here is the way an insurance company    22 can help itself. Knowing that, and now going into    23 negotiations for this next year's premium, they're going    24 to look at the current statute of limitations once you</p>
<p style="text-align: center;">Page 163</p> <p>1 that the notion that somehow this is going to clog up    2 the courts is absurd.</p> <p>3 A point that I think is key to understand    4 in this, the actual number of torts which have reached    5 U.S. District Courts since its peak in 1985 has been    6 that the number of trials that have been terminated at    7 the District Court level has declined by nearly 80    8 percent, 79 percent. So tort claims are going down,    9 folks, not up. Even in -- and this is 2007 we're    10 talking about, so we have a little history on these    11 child abuse claims. And the Department of Justice    12 concluded, and I quote, that our 225-year-old legal    13 system has multiple procedural safeguards to treat    14 defendants fairly and insure their rights, especially as    15 to the amount and quality of evidence that must be    16 present for any case to proceed. Judges monitor filings    17 closely and readily dismiss cases that lack merit. In    18 some cases attorneys have been punished - mentioned here    19 earlier - for bringing suits that lacked merit into    20 court in an abuse of the legal process.</p> <p>21 Last, last point. I agree that changing    22 the statute of limitations in this way with the two-year    23 look-back provision could change the financial and risk    24 management picture for organizations and of course</p>	<p style="text-align: center;">Page 165</p> <p>1 all pass it - as I'm confident that you will, I    2 certainly hope so, I'm lighting candles like mad, so,    3 and we hope that's going to work - they're going to take    4 a look at these organizations, like Mr. Krupanski's    5 organization, like the YMCA, the other nonprofits that    6 Mr. Reardon represents, and they're going to adjust the    7 premium based on the track record and the corporate    8 practices that have been -- that have been taking place    9 over time for that organization.</p> <p>10 So I can't speak for all the nonprofits in    11 Delaware, but for many of those that I'm aware of their    12 record of caring for kids has been pretty good and they    13 have met the standard for the times.</p> <p>14 When the insurance company comes around to    15 rate that insurance they're going to look at what their    16 practices were before they set premium.</p> <p>17 I think this is maybe the most important    18 thing. Those of us who have worked in these    19 youth-serving nonprofits realize that the vast majority    20 of abuse cases involve family members. Not a lot of the    21 institutions we have seen represented here. And after    22 all, if we work in one of these nonprofits we have an    23 affirmative duty to report any suspected case of abuse    24 to Child Protective Services. So we know about sort of</p>

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<p style="text-align: right;">Page 166</p> <p>1 the magnitude of the problem out there. This Bill is 2 all about keeping today's kids safe, finding redress, 3 appropriate redress for the now adult victims, and 4 especially exposing the predators who are very likely 5 still among us.</p> <p>6 Abuse by clergy represents a tiny fraction 7 of abuse cases as you heard, and yet the Diocese of 8 Wilmington, unlike other Delaware religious institutions 9 I'd like to point out, would bar redress for all past 10 victims of child sexual abuse to protect its own narrow 11 interests.</p> <p>12 I stand before you as a Delawarean, a YMCA 13 member, a charitable donor. I tell you that I'm proud 14 of the many nonprofit organizations that put their name 15 on the Child Victim's Voice website and have 16 courageously set themselves right in the forefront, as I 17 believe they should in supporting this Bill. And with 18 that, members of the committee, Senator, I'd be happy to 19 take any questions you have.</p> <p>20 REPRESENTATIVE VALIHURA: Thank you very 21 much. You're not here on behalf of the YMCA, are you?</p> <p>22 MS. PAULA WELDON: No, I'm not. I'm here 23 with the authorization of the president of the YMCA.</p> <p>24 REPRESENTATIVE VALIHURA: Personal</p>	<p style="text-align: right;">Page 168</p> <p>1 list him on the sex registry. Well, he shouldn't have 2 mooned her I guess. But most importantly I think for 3 what I do, I'm a therapist. I get to meet people as 4 wonderful as Mr. Keating in their worst hour. I get to 5 sit with them when they finally are ready to talk about 6 their suffering.</p> <p>7 Today we have heard a lot of suffering. We 8 have heard from survivors of sexual abuse and their 9 advocates. We have heard from institutions who are 10 concerned and I understand that concern about their well 11 being. There is one group we haven't heard from, 12 though. The perpetrators, and nor will you, of course. 13 There is no lobby for sexual abusers. So I thought it 14 was important for this committee to understand the 15 mindset of the sexual abuser, and I have prepared a 16 document which is too long to read in this time limit 17 but I hope you'll take a look at, because perpetrators 18 of sexual abuse are not the stereotype we'd like to 19 believe. They have been painted in very broad brush 20 strokes by some of the people who have testified here as 21 if they're sleazy-looking people who lurk under rocks. 22 They're not. They look like fathers, brothers, uncles, 23 priests, rabbis, Little League coaches. They look like 24 everyone else, male or female.</p>
<p style="text-align: right;">Page 167</p> <p>1 authorization, not --</p> <p>2 MS. PAULA WELDON: It is the personal 3 authorization of the president. The Board has not voted 4 on a position on this Bill.</p> <p>5 REPRESENTATIVE VALIHURA: Thank you. 6 Members of the committee, anyone? Thank you very much. 7 Dr. James Walsh.</p> <p>8 MR. JAMES WALSH: Good afternoon. My name 9 is Dr. Jim Walsh, and my credentials are that my 10 doctorate is in pastoral counseling. I'm a board 11 certified counselor by the National Board. I'm a 12 licensed professional counselor in Delaware. Governor 13 Minner has appointed me a year and a half ago to the 14 License Board which has oversight of ethical practices 15 of counselors in the state. I'm a professor at 16 Wilmington College in the masters and counseling program 17 where I do clinical supervision of our interns and make 18 sure that they practice ethically and practice in a 19 clinically sound manner.</p> <p>20 I'm an expert witness in federal and state 21 courts. I have probably testified or submitted reports 22 in over a hundred cases ranging from things as serious 23 as murder to as trivial as the 12-year-old who mooned 24 his principal a couple of years ago. They wanted to</p>	<p style="text-align: right;">Page 169</p> <p>1 Here is how they think. First, they're not 2 impulsive. These acts are planned very carefully. Oh, 3 occasionally there is an impulse action, but, generally 4 speaking, sexual predators are not impulsive men and 5 women. They carefully assess the vulnerability and 6 accessibility of their victims. They watch. They find 7 the child who is in a family that's chaotic, that's 8 vulnerable. We heard Mr. Burke's testimony about how 9 many children in his family were victimized, and I don't 10 know much about Mr. Burke's family of origin, but there 11 was something there that predators picked out indicating 12 an accessibility and vulnerability.</p> <p>13 Second, they establish a positive rapport. 14 They become a friend of the family, of the child. They 15 talk their way in. They're expert con men. They know 16 how to lie and to lie with impunity.</p> <p>17 Third, they test the victim. It may be 18 through intimidation, persuasion, some guilt trips. 19 They say things like it's just a drink to a 14-year-old, 20 loosen up, have some fun, and if there is a protest they 21 say whoa, you're taking this out of context, I was just 22 kidding around. They minimize what happened.</p> <p>23 Fourth, when they have tested their victim 24 and they know they have someone who will comply, they</p>

<p>1 isolate the victim: First psychologically, they make  2 them the most important person in their life, and then  3 physically, they get them alone, someplace where there  4 is no help, and then of course they're ready to  5 victimize. And victimization takes many forms,  6 something as simple as just rubbing genitals against the  7 person to the point of climax, to as vicious as  8 sodomizing that person, orally raping, horrible actions.  9         And then the most insidious of the steps,  10 the sixth and seventh. First, they insure the secrecy  11 of the action. They choose a tricky way to do this  12 usually. They do it by normalizing what they have done.  13 They say this is okay. This isn't bad. This didn't  14 hurt you. Everything we have done is good fun, and then  15 the worst is when they are around the victim's family or  16 friends they act in a completely normal way while the  17 victim sits there numb, wondering what is actually  18 happening. They tell the victim if you tell you'll get  19 in trouble. You'll be wrong. So immediately not only  20 is the victim victimized by the sexual abuse itself but  21 the victim is overpowered and learns that he or she is a  22 powerless person.  23         And, finally, they revictimize, and the  24 revictimization in its most obvious form of course is in</p>	<p>1 to keep secrets because when you do so you join the  2 perpetrator, and I do not say that you join the  3 perpetrator consciously or willingly, but you do,  4 unwittingly. And it is not until you break your own  5 secrecy that you will begin to heal and be a survivor as  6 well. Thank you.  7           REPRESENTATIVE VALIHURA: Thank you.  8 Representative Hudson.  9           REPRESENTATIVE HUDSON: We were chatting  10 some of us legislators during the break and we were  11 wondering how many people are abused in Delaware. Since  12 this is your field, can you give us not a statistic that  13 you see on the buttons here, but what is your really  14 feeling?  15           MR. JAMES WALSH: Unfortunately the  16 research is true. It's horrific. One out of five, one  17 out of four gets thrown around.  18           REPRESENTATIVE VALIHURA: Where does that  19 number come from?  20           REPRESENTATIVE HUDSON: Yeah.  21           MR. JAMES WALSH: The research statistics  22 come out of scientifically peer-reviewed journals, APA  23 styled journals that conduct very careful research.  24 Right now the most recent research I have seen is</p>
<p>1 the continued sexual contact. But don't think that's  2 all. Because even into adulthood perpetrators of  3 childhood sexual abuse will continue to contact the  4 adult survivor and taunt, will call and say horrible  5 things on the phone, like remember the good times we  6 had, remember the fun, anonymously and then hang up.  7 Yes, I have sat with people who have been victimized.  8 It's awful.  9         In conclusion, I'd like to strongly caution  10 the institutions that have lobbied against this Bill.  11 It is a very slippery slope to take the side of the  12 perpetrator. The perpetrator is a con person. The  13 perpetrator is slick. They're good. And they will have  14 you believe that they are the victim. They will have  15 you believe that these people who come forward are out  16 to get them.  17         Institutions can be easily fooled, I  18 believe, just as the original child victim was fooled.  19 Children who were victimized become survivors when the  20 secret is broken and we are only as sick as the secrets  21 we keep. When the secret comes out into the open the  22 victim becomes a survivor and can begin to live.  23         I would urge the institutions that oppose  24 this Bill to consider carefully how hard you're working</p>	<p>1 showing, it depends on the survey, one in four, one in  2 five females, one in six, one in seven males. It's  3 thought that male population report is probably  4 underreported because of societal shame issues around  5 sexual abuse. Boys who were sexually abused, as  6 horrible as it is for young ladies, there is an  7 additional shame layer for men. But the peer-reviewed  8 journals, APA American Psychology Association which are  9 the sine qua non for peer-reviewed journals consistently  10 report numbers around one in five, one in four --  11           REPRESENTATIVE VALIHURA: Can you get us a  12 copy of the most recent one and make sure that it gets  13 to Renee or Representative Hudson so that she can  14 distribute it to members of the community?  15           MR. JAMES WALSH: Very well.  16           REPRESENTATIVE HUDSON: And to just follow  17 up on that very quick, do you think it's getting worse?  18 Do you think it's a stable number?  19           MR. JAMES WALSH: I am pessimistic because  20 of how sexualized our society is. You can't turn on  21 television without seeing youngsters sexualize. 14, 15  22 years old acting and made up as adults. I remember  23 years ago how heartsick I became just looking at  24 photographs of JonBenet Ramsey, a seven, eight-year-old</p>

<p style="text-align: right;">Page 174</p> <p>1 girl made to look like a sexual object.  2 REPRESENTATIVE VALIHURA: I think the worst  3 is the 20-year-old trying to look 15.  4 MR. JAMES WALSH: Yes.  5 REPRESENTATIVE VALIHURA: And that's really  6 where you give a -- the younger generation an improper  7 view of what it is to be their age. I mean I find that  8 to be very difficult.  9 MR. JAMES WALSH: And it's not just in the  10 states. I have just returned from Japan and there is a  11 phenomenon in Tokyo called the Harajuku girls who dress  12 up Lolito style, which they're 14, 15-year-old girls and  13 stand in a particular neighborhood looking like a cross  14 between a 25-year-old Playboy model and a 12-year-old,  15 and as you walk past and you watch the men leering you  16 realize how sick this is. And Harajuku girls are  17 institutionalized by singers such as Gwen Stefani who  18 has women dressed as Harajuku backing her up. So I'm  19 sorry to say I'm pessimistic how much there is.  20 And one anecdote, for years I ran a support  21 group for women suffering from pathological gambling  22 which is an epidemic in this state amongst middle-aged  23 women especially because of the availability of slot  24 machines.</p>	<p style="text-align: right;">Page 176</p> <p>1 Institute or DCC you will find horrific percentages of  2 inmates who were sexually assaulted in childhood. If  3 you go into BWCI, Baylor Women's Prison, it will be  4 nearly 100.  5 (Whereupon Tape 3, Side 1 ended. The  6 following is Tape 3, Side 2:)  7 MR. JAMES WALSH: -- comes out there and  8 they need their -- they need their day in court.  9 REPRESENTATIVE VALIHURA: Representative  10 Stone?  11 REPRESENTATIVE STONE: Thank you,  12 Mr. Chair. Thank you so much for being here with us  13 today. And thank you for not reading to us. That was  14 great.  15 MR. JAMES WALSH: You're welcome.  16 REPRESENTATIVE STONE: And I appreciate  17 your testimony very, very much. It was very interesting  18 to me to kind of have you take us into the mind of a  19 predator. And you talked about, you know, just the  20 sadness in our society of youngsters and trying to look  21 like very sexual adults and the reverse and that's a  22 bigger topic than we're here addressing today. But do  23 you think that today as a society, and I'm not just  24 going to single out families but also in sexual</p>
<p style="text-align: right;">Page 175</p> <p>1 REPRESENTATIVE VALIHURA: No. Hard to  2 believe. Oh, shocking. Shocking.  3 MR. JAMES WALSH: One evening we had 11  4 women in the room in the support group and one began to  5 weep and in a fashion that Mr. Burke evoked for me when  6 the memories had come back to her when her perpetrator,  7 the man who had sexually assaulted her in childhood,  8 called and taunted her on the telephone, and she came  9 into our support group just falling apart. And after  10 ten or 15 minutes of her talking about this, what do you  11 say? How do you talk? And so I just looked around the  12 room at the ten other women and said is there anyone --  13 anything anyone can say right now? Is there anyone who  14 can speak to this themselves personally? And out of the  15 ten remaining women eight hands went up. And I can tell  16 you if you go into an addiction treatment center, and  17 Mr. Keating shared that he's in 12-step recovery, if you  18 go into an addiction treatment center and poll the  19 people in those centers as to what percentage were  20 sexually assaulted in childhood it will rival those  21 kinds of numbers.  22 And I can tell you right now, though the  23 example Mr. Reardon gave sounds horrific, if you go into  24 Gander Hill Prison right now or Sussex Correctional</p>	<p style="text-align: right;">Page 177</p> <p>1 education of our young people, that this is an issue  2 that we are doing better communicating to young people  3 today? A couple of the victims commented that they  4 wouldn't go home and tell their family for fear that it  5 would be perceived that they were at fault, that it was  6 their fault. But I - at least my impression is today  7 we're much more aware of this type of abuse and we try  8 to communicate to our young people that people shouldn't  9 be touching you in your private place. We teach  10 youngsters today about inappropriate touching and  11 inappropriate behavior. Am I right or am I wrong? I  12 hope I'm right, that we are doing a little better job  13 and that today children, at least our young people today  14 don't feel wrong to go home and tell mommy or tell daddy  15 or tell whoever is their guardian I think something  16 inappropriate happened to me today?  17 MR. JAMES WALSH: I have to answer that  18 question of course more as a parent than as a  19 professional.  20 REPRESENTATIVE STONE: Of course.  21 MR. JAMES WALSH: Because there is not  22 research or literature to that. And I think the answer  23 to that question -- I think I have mixed feelings about  24 that. I think on the one hand that we are.</p>

<p style="text-align: right;">Page 178</p> <p>1 REPRESENTATIVE STONE: I hope so.</p> <p>2 MR. JAMES WALSH: I know that the codes of</p> <p>3 ethics that we see across the board in my field, APA</p> <p>4 Code, ACA Code which is mine, American Counseling</p> <p>5 Association, the social workers, psychiatrists, et</p> <p>6 cetera.</p> <p>7 REPRESENTATIVE VALIHURA: And the legal</p> <p>8 profession, too.</p> <p>9 MR. JAMES WALSH: I'm sorry?</p> <p>10 REPRESENTATIVE VALIHURA: The legal</p> <p>11 profession, too.</p> <p>12 MR. JAMES WALSH: And the legal profession.</p> <p>13 So I think the codes are much more up to date and much</p> <p>14 better, no question about that. However, I will say</p> <p>15 this, I asked my mom, who is 77 years old, a few months</p> <p>16 ago, I said mom, if I had come home and said that</p> <p>17 Monsignor Gilhooley who was our Pastor or Mr. Duncan who</p> <p>18 was my Little League coach had sexually touched, had</p> <p>19 done this, that or the other thing to me, what would you</p> <p>20 have thought or said or done? She said well, before or</p> <p>21 after I killed him? Yeah.</p> <p>22 So on the one level I think as a society,</p> <p>23 sure, there is more publicity, it's out in the open.</p> <p>24 There is more talk about hey, you're not the</p>	<p style="text-align: right;">Page 180</p> <p>1 whole three hours on May 10th and he couldn't be here</p> <p>2 today, so he did two things, he wrote a very long letter</p> <p>3 which I won't read, Mrs. Stone. I will give you a copy.</p> <p>4 You can read it at home. But let me read you the last</p> <p>5 paragraph. I support Senate Bill 29. I believe that</p> <p>6 whatever political short-term challenges it poses for</p> <p>7 these institutions with a history of failing to provide</p> <p>8 supervised -- properly supervised adults with access to</p> <p>9 children are outweighed by the importance of vindicating</p> <p>10 the rights of adults who were subjected to horrific</p> <p>11 abuse. I would be happy to answer any additional</p> <p>12 questions the committee has of them.</p> <p>13 And he sincerely means this. I was</p> <p>14 speaking to him over the weekend. He sent Mike Vild</p> <p>15 today but I don't necessarily intend to have him speak.</p> <p>16 The letter is very comprehensive and I would recommend</p> <p>17 my colleagues speak to him directly about real specific</p> <p>18 questions. I have copies.</p> <p>19 REPRESENTATIVE VALIHURA: Can you make sure</p> <p>20 that all the members get copied? I am told that Matt</p> <p>21 Doyle is in the room. Is he here? Mr. Doyle.</p> <p>22 REPRESENTATIVE HUDSON: Mr. Who?</p> <p>23 REPRESENTATIVE VALIHURA: Doyle. Doyle.</p> <p>24 Who works for Zutz Insurance or HRH I think it is now.</p>
<p style="text-align: right;">Page 179</p> <p>1 perpetrator, even though the perpetrator has made you</p> <p>2 feel like that. But on the other hand people have</p> <p>3 always known this was wrong. And there is a tendency</p> <p>4 sometimes when I hear institutions talk about this as if</p> <p>5 well, we didn't really know back in 1962. Well, you</p> <p>6 know, we did. We knew then. And we know now.</p> <p>7 So, yes, and no. I think more publicity,</p> <p>8 yes, I think that's good. And I think children today</p> <p>9 are probably in a more free environment to know this is</p> <p>10 wrong. But on the other hand look at the mixed message.</p> <p>11 You turn on the TV and look at the sexualization. So I</p> <p>12 think it's a mixed bag. I truly do.</p> <p>13 REPRESENTATIVE STONE: Thank you. Thank</p> <p>14 you for your information.</p> <p>15 REPRESENTATIVE VALIHURA: Any other</p> <p>16 questions from members of the committee? If not, thank</p> <p>17 you very much, Dr. Walsh.</p> <p>18 MR. JAMES WALSH: You're welcome.</p> <p>19 REPRESENTATIVE VALIHURA: One of the issues</p> <p>20 that didn't come out today which I was a little</p> <p>21 disappointed my friends in the insurance -- oh, yes?</p> <p>22 Yes. Representative Hudson.</p> <p>23 REPRESENTATIVE HUDSON: Thank you.</p> <p>24 Mr. Denn, the Insurance Commissioner was here for the</p>	<p style="text-align: right;">Page 181</p> <p>1 MR. MATTHEW DOYLE: We recently merged with</p> <p>2 an international. We're now part of the eighth largest</p> <p>3 brokerage firm in the world.</p> <p>4 REPRESENTATIVE VALIHURA: You're going to</p> <p>5 have to speak into the microphone.</p> <p>6 MR. MATTHEW DOYLE: I'm sorry.</p> <p>7 REPRESENTATIVE VALIHURA: We're going to</p> <p>8 ask you to keep your remarks shorter.</p> <p>9 MR. MATTHEW DOYLE: Oh, it will be very</p> <p>10 short, believe me.</p> <p>11 REPRESENTATIVE VALIHURA: Okay.</p> <p>12 MR. MATTHEW DOYLE: My name is Matthew</p> <p>13 Doyle and I am a senior account executive at Zutz</p> <p>14 Insurance, a division of the Hilb, Rogal &amp; Hobbs.</p> <p>15 REPRESENTATIVE VALIHURA: You're still</p> <p>16 going to have to get closer to the microphone.</p> <p>17 MR. MATTHEW DOYLE: My name is Matthew</p> <p>18 Doyle and I am a senior account executive at Zutz</p> <p>19 Insurance which is part of the HRH program, otherwise</p> <p>20 known as Hilb, Rogal &amp; Hobbs. We're the eighth largest</p> <p>21 brokerage firm in the world and I have been asked to</p> <p>22 speak on behalf of I had two -- we were here at the last</p> <p>23 hearings on May 10th, my two counterparts could not make</p> <p>24 it due to their traveling schedules and so I am here</p>

<p style="text-align: right;">Page 182</p> <p>1 standing here solo to talk about the insurance industry 2 and coverages that relate to sexual abuse and 3 molestation, otherwise known as SAM. 4 Insurance industry what most people don't 5 understand is that the coverage is never included in a 6 policy. You have talked about the insurance picking up 7 the coverage. It is specifically excluded. It is a 8 deliberate act that is not covered by any insurance 9 policy and it is also a criminal act which is 10 specifically excluded by all insurance policies. 11 Everybody from what I have been listening through the 12 last two hearings seems to misinterpret that. 13 The coverage that gets placed on to an 14 insurance policy is -- has been added back on to the 15 policy at the discretion of the insurance carrier. And 16 when it -- years back when it was added on the coverage 17 was set up usually at policy limits. Now you have to 18 also understand that the insurance industry is set up on 19 a basic premise that all of us, whether it's commercial 20 insurance or your personal insurance, we all pay into 21 the pool and the claims of the few are paid by the 22 premiums of all of us. And that's how insurance 23 companies figure out your rates, how things are charged. 24 And sexual abuse and molestation coverage is no</p>	<p style="text-align: right;">Page 184</p> <p>1 institutions, for any social service organization. They 2 would add it at a small percentage of their primary 3 liability premium to add this coverage on to it and the 4 umbrella carrier would charge accordingly also, based on 5 a percentage of the primary insurance costs. 6 As time has rolled out and these claims 7 have come about the industry shrinks. What used to be a 8 hundred insurers in the near present all of a sudden 9 you're down to 50 insurers and no one writes umbrella 10 coverage over the primary limit. So now a social 11 service organization, the Y, or anybody, all the 12 nonprofit organizations that I insure in the State of 13 Delaware are having capped at a million dollar limit if 14 they can get that. As we have gone to the nearer 15 present the companies have now shrunk from 50 insurers 16 maybe to ten or 15 that would write this and now they're 17 only -- and they're reducing their limits to 500,000. 18 They won't give the million dollar limit. They're also 19 charging instead of the smaller percentage of the 20 premium, double the premium, three times the premium, 21 depending on what they feel is the exposure of that 22 entity. 23 Now we get to the nearest present. We're 24 down to maybe five insurers. They're not providing</p>
<p style="text-align: right;">Page 183</p> <p>1 different. 2 Many years ago coverage could get added 3 back and it was added back on at policy limits. Now, 4 policy limits traditionally for any business is a 5 million dollars. We were taught that that is considered 6 corporate financial responsibility to the public. 7 An umbrella policy, for those of you who 8 are not familiar with it, gives you additional limits of 9 liability for third party lawsuits. And in years back 10 umbrella insurance companies would add sexual abuse and 11 molestation coverage as part of it. SAM was added back 12 on top of the million dollar primary limit to give you 13 five million or ten million, whatever your umbrella 14 limit was. As time has passed -- and that pricing that 15 was dictated was based on the statistics of claims, and 16 the rates were charged accordingly based on the claims, 17 as well as the policy limits that were under the -- 18 underlying the first million dollars. If you only had a 19 half a million dollars there would be no coverage on the 20 umbrella because it would not sit on top of it. 21 As these cases have come about over the 22 years the industry has shrunk. Originally we could say, 23 just picking a number, there were a hundred insurers who 24 would write this coverage for schools or private</p>	<p style="text-align: right;">Page 185</p> <p>1 coverage at all or they're providing a bare minimum of 2 50,000 or 100,000 dollar limits and that cost that they 3 are charging for that small amount of coverage is almost 4 cost prohibitive to the day care centers, to the 5 schools, to social service organizations, and if you 6 don't cross your T's and dot your I's according to the 7 underwriting guidelines, like run a full report on every 8 individual or every volunteer and every employee, they 9 will not give you the coverage. 10 So they are now faced with not being able 11 to get a coverage, you're not -- and if you can get it 12 it's a minimal limit and at a cost -- and it's so cost 13 prohibitive the organization almost has to go either 14 bare or not exist if they want to be in society here. 15 For the future I don't know what -- what's 16 going to happen. If things keep going the way they are 17 going I can see that the standard insurers will 18 completely drop out of the market. That's your 19 Hartford, your Fireman's Fund, Travelers, St. Paul, all 20 your standard insurers, those who have rates and forms 21 filed with the State of Delaware. And what it will go 22 as to the surplus lines insurance company and they write 23 their own forms and they charge their own rates. And if 24 the industry feels that the costs are prohibitive for</p>

<p>1 them to have this coverage, wait until they see what the  2 surplus lines insurers charge and they will probably get  3 even less limits.</p> <p>4 Because you also have to remember that  5 going back to what I first stated, the insurance  6 industry has the premiums of the many pay the claims of  7 the few. Delaware has 800,000 residents, approximately.  8 I'm from Pennsylvania so I'm just relaying that.</p> <p>9 REPRESENTATIVE VALIHURA: We won't hold it  10 against you.</p> <p>11 MR. MATTHEW DOYLE: Thank you. But what  12 happens is State rates there is not enough spread of  13 risk and the costs will escalate so high that no one  14 will be able to get it. And that's pretty much what  15 will happen. It's what I'm looking at at the future,  16 and for me to place coverages for the social service  17 organizations, I have one that they wouldn't -- the  18 insurers wouldn't even talk to because they didn't do  19 full background checks on every volunteer that worked  20 there, not to mention the Little Leagues and the girl's  21 softball leagues and soccer leagues, all these leagues  22 that I insure, the underwriting requirements that the  23 insurance companies are putting on these individual  24 organizations for our children to be out there to play</p>	<p>1 been done before will the insurers tend to believe that  2 Delaware is going down a route that may cause problems  3 for them and, one, pull out, or, two, charge higher  4 rates which by the way goes on all constituents?</p> <p>5 MR. MATTHEW DOYLE: Well, as I said, I  6 don't have a crystal ball but my personal feeling would  7 be that the insurance marketplace will constrict  8 severely if you start opening a window because their  9 rates over time were based on claims and statute of  10 limitations. You open up that window and the insurance  11 industry has not promulgated past rates to pick up these  12 additional timeframe. It's like -- on a claims-made  13 form --</p> <p>14 REPRESENTATIVE VALIHURA: Matt Denn  15 disagrees with you but that's okay. I just want to  16 understand what you think. Is it a possibility? Is  17 that scenario correct?</p> <p>18 MR. MATTHEW DOYLE: You are correct. It  19 will constrict.</p> <p>20 REPRESENTATIVE VALIHURA: It could happen.  21 Okay. I am going to ask Mr. Vild to come up shortly but  22 I want to make sure the questions of Mr. Doyle get  23 answered first but I am going to ask him the same  24 question.</p>
<p>1 and to do extracurricular activities is almost cost  2 prohibitive because of the costs that they are being  3 charged to do these checks so that they can even have  4 insurance.</p> <p>5 REPRESENTATIVE VALIHURA: Thank you,  6 Mr. Doyle. The question I have is --</p> <p>7 MR. MATTHEW DOYLE: Yes.</p> <p>8 REPRESENTATIVE VALIHURA: -- is more of a  9 balancing thing. We're asked to make tough decisions  10 here and I have mentioned this at our last committee  11 hearing. And we're balancing policy issues. And one of  12 the things that I want to understand is that this is  13 going and opening up a two-year look-back period is  14 unprecedented in this State, and it will -- and once we  15 do it for this there will be other folks that will  16 approach us for opening up look-back periods for other  17 problems such as medical malpractice and folks who are  18 injured, killed, whose time has expired, whose claims  19 are as every much as important or as dramatic or  20 traumatic as we heard today and throughout these  21 hearings, and what I am concerned about as just a policy  22 matter is, is this going to have a cascading effect on  23 other insurance? Because once they see that we're  24 moving in a direction here doing something that's never</p>	<p>1 Page 189  2 MR. MATTHEW DOYLE: You also have to  3 remember that you can not buy coverage backwards. You  4 can only go forwards.</p> <p>5 REPRESENTATIVE VALIHURA: Yes. I know that  6 very well.</p> <p>6 MR. MATTHEW DOYLE: So what happens is  7 these -- the insurers -- and also with the current  8 statute of limitations, go back to the pollution when  9 the law was changed concerning pollution liability  10 exposure. Companies had had -- and we had very -- we  11 were very different than everyone else because we have a  12 warehouse full of past documents, as long as they  13 haven't gotten wet, but insurance carriers don't  14 maintain coverage. They -- seven years, they throw out  15 all their files. They're done. So when the pollution  16 opened up this coverage back forever to the guilty  17 party, companies had very tough times proving that they  18 had insurance during those windows, even though the  19 policy technically excluded that.</p> <p>20 REPRESENTATIVE VALIHURA: Do you know who  21 made out? Delaware lawyers did. I just wanted to make  22 sure you understood that. We had coverage cases galore  23 in the State of Delaware. Representative Stone.</p> <p>24 MR. MATTHEW DOYLE: Yes.</p>

<p style="text-align: right;">Page 190</p> <p>1 REPRESENTATIVE STONE: Thank you, Mr. Doyle    2 for being here and for your testimony. Dr. Weldon made    3 a point at the end of her comments about insurance. Did    4 you hear them?</p> <p>5 MR. MATTHEW DOYLE: Yes.</p> <p>6 REPRESENTATIVE STONE: Would you comment on    7 those for me? If you don't remember them I'll just pass    8 this to you. The last --</p> <p>9 MR. MATTHEW DOYLE: Yes. I'd like to    10 quickly refresh my, I mean I have been listening to so    11 many different. She addressed the two different forms    12 of coverage, claims made and currents. The rates that    13 are charged are the rates that are charged for that    14 period. I don't understand when she can adjust premium    15 loading and retentions to account for the past risk.    16 That's just reserving additional -- her additional    17 claims that have been reported. That's not collecting    18 any money or statistical analysis -- from the statistics    19 that existed at the time that that policy year was    20 written. So you have an insurance industry who will be    21 incurring more claims because of the openedendedness of    22 this law and as a result the insurance companies were    23 saying we're losing too much money, we're pulling out of    24 the State.</p>	<p style="text-align: right;">Page 192</p> <p>1 consumer at all times, yes, it does.</p> <p>2 REPRESENTATIVE VALIHURA: Representative    3 Hudson.</p> <p>4 REPRESENTATIVE STONE: Thank you. Thanks.</p> <p>5 REPRESENTATIVE HUDSON: Just a quick    6 question on the look-back period.</p> <p>7 MR. MATTHEW DOYLE: Yes.</p> <p>8 REPRESENTATIVE HUDSON: The person either    9 had insurance or they didn't, is that correct? They    10 were either covered or they weren't.</p> <p>11 MR. MATTHEW DOYLE: You have to    12 understand --</p> <p>13 REPRESENTATIVE HUDSON: Well, could you    14 answer?</p> <p>15 MR. MATTHEW DOYLE: The policy does not    16 cover the act. It's a crime and it's a deliberate act    17 so it's automatically excluded. If an organization had    18 coverage it was added back in with a supplement, meaning    19 that it was -- if a standard policy has a one million    20 per occurrence and a two million aggregate, what that    21 means is that for any one lawsuit there is a one million    22 dollar limit and the most the insurance policy will pay    23 in a policy year is two million dollars. A sexual abuse    24 and molestation endorsement, SAM, might have a flat</p>
<p style="text-align: right;">Page 191</p> <p>1 REPRESENTATIVE STONE: Wouldn't the other    2 option be to just increase everybody's premiums?</p> <p>3 MR. MATTHEW DOYLE: They could increase the    4 premiums but they would have to increase them to a point    5 where they would be almost cost prohibitive.</p> <p>6 REPRESENTATIVE STONE: So would that --</p> <p>7 MR. MATTHEW DOYLE: And you would be    8 putting daycares and Little Leagues and girls soccer    9 leagues and boys soccer leagues and the lacrosse    10 leagues, all the children's activities outside of the    11 school would be shut down because they could not afford    12 to carry the insurance. I can tell you that. The    13 insurers will pull out, or they will charge so high that    14 no one can afford to have it and who is going to foot    15 that bill? Okay. If my son who is now in college    16 wanted to play lacrosse instead of paying the usual    17 hundred dollars it might be \$500 for him to pay because    18 they would have to cover the medical as well as the    19 additional insurance costs for the league to carry.</p> <p>20 REPRESENTATIVE STONE: It gets passed on.</p> <p>21 MR. MATTHEW DOYLE: It gets passed on.</p> <p>22 REPRESENTATIVE STONE: To the ultimate    23 consumer.</p> <p>24 MR. MATTHEW DOYLE: To the ultimate</p>	<p style="text-align: right;">Page 193</p> <p>1 limit of one million dollars or \$500,000 and the    2 umbrella policy would not most likely be riding over it.    3 So that that would be the only limit that's available.    4 And only if that endorsement was added back to a policy    5 is there coverage. There is no gray areas on a policy.</p> <p>6 REPRESENTATIVE HUDSON: That's what I was    7 getting to.</p> <p>8 REPRESENTATIVE STONE: Is it a fair analogy    9 of that the same thing that when you're buying a    10 homeowners policy your policy excludes things like furs    11 and jewelry and very expensive equipment?</p> <p>12 MR. MATTHEW DOYLE: No.</p> <p>13 REPRESENTATIVE STONE: And if you want to    14 insure those things you buy what's called a rider? I    15 mean I'm just trying to --</p> <p>16 MR. MATTHEW DOYLE: Well, there is -- there    17 is -- you're talking property versus casualty.</p> <p>18 REPRESENTATIVE STONE: That I understand.</p> <p>19 MR. MATTHEW DOYLE: Okay. From a property    20 standpoint, all your furs, your jewelry, everything is    21 included as part of your quote-unquote contents, your    22 personal property, real property being the building, of    23 course, and your personal property meaning everything    24 you would take with you when you moved, easiest way to</p>

<p style="text-align: center;">Page 194</p> <p>1 describe that. If you want to specifically insure    2 something, your -- my wife's diamond -- my wife's    3 engagement ring, I specifically schedule that so that it    4 is specifically insured for a value, because otherwise    5 you get your settlement in the event of a loss is here    6 is X amount of dollars. Well, it would cost me so much    7 more to replace it. Well, that's not the way the policy    8 is written because we have no exact figure for that    9 item.</p> <p>10 REPRESENTATIVE STONE: And that's the way    11 you purchase this type of insurance that you're    12 referring to which is a supplemental type of insurance?</p> <p>13 MR. MATTHEW DOYLE: Correct. It's an    14 add-on to give you coverage. The policy excludes it and    15 this adds the coverage back on and then the insurance    16 carrier, the underwriter determines based on your --    17 what you do and your exposure how much limit and if it's    18 a standard insurer versus a surplus lines insurer then    19 those rates are filed with the State as to what they can    20 charge, and they have to refile rates in order to change    21 that. So rather than go through that long process, what    22 they do is they just pull the coverage and say we don't    23 offer this any more.</p> <p>24 REPRESENTATIVE VALIHURA: Senator Peterson.</p>	<p style="text-align: center;">Page 196</p> <p>1 to explain --</p> <p>2 REPRESENTATIVE VALIHURA: And you didn't    3 come down here and testify because you were opposed to    4 the Bill or you're in favor of the Bill. You came down    5 here and said this is what we'll see out --</p> <p>6 MR. MATTHEW DOYLE: This is the insurance    7 industry. This is how the insurance industry will    8 react.</p> <p>9 SENATOR PETERSON: Thank you. I wasn't    10 sure what his role was here.</p> <p>11 REPRESENTATIVE VALIHURA: I think that's    12 why he's here.</p> <p>13 MR. MATTHEW DOYLE: Yes. I'm only here for    14 the insurance because I'm a nonresident.</p> <p>15 SENATOR PETERSON: All right. Now, there    16 are now three states that have look-back periods,    17 California, Minnesota and South Dakota; did their    18 insurance -- did all the insurance companies pack up and    19 leave?</p> <p>20 MR. MATTHEW DOYLE: I can't answer for    21 those states.</p> <p>22 SENATOR PETERSON: But I thought I    23 understood you to say there would be no insurance in the    24 State of Delaware if the Bill passes?</p>
<p style="text-align: center;">Page 195</p> <p>1 SENATOR PETERSON: Yes, thank you, Mr.    2 Chairman. Are you for or against the Bill? I never    3 heard you say whether you like it or you don't like it.    4 Given that you have said you don't cover anything old    5 because it was a crime so the retroactivity is not an    6 issue.</p> <p>7 MR. MATTHEW DOYLE: Correct.</p> <p>8 SENATOR PETERSON: If you look forward you    9 have to charge a lot of money which means you're going    10 to make a lot of money. So are you for the Bill or    11 against it?</p> <p>12 MR. MATTHEW DOYLE: I am for protecting all    13 children.</p> <p>14 SENATOR PETERSON: Okay.</p> <p>15 MR. MATTHEW DOYLE: Okay. And I have to    16 try and stay professional versus myself personally and    17 you don't want to hear my personal opinions on that in    18 this courtroom because I have certain personal --</p> <p>19 REPRESENTATIVE VALIHURA: Well, let me --</p> <p>20 MR. MATTHEW DOYLE: -- feelings toward.</p> <p>21 REPRESENTATIVE VALIHURA: Let me stop you    22 right here. I mean I think you're here explaining the    23 insurance ramifications.</p> <p>24 MR. MATTHEW DOYLE: Insurance, and I want</p>	<p style="text-align: center;">Page 197</p> <p>1 MR. MATTHEW DOYLE: What will happen, and I    2 said this, I can't predict the future, but the shrinkage    3 in my markets that I used to deal with was, picking a    4 number, 100 insurance carriers, as these cases have gone    5 through the -- since -- in the past several years, the    6 markets that I deal with, the insurance companies, has    7 shrunk down to I am down to maybe three, three to five    8 carriers that will write schools, social service    9 organizations, anything that has to deal with    10 children --</p> <p>11 SENATOR PETERSON: Isn't the --</p> <p>12 MR. MATTHEW DOYLE: -- that will provide    13 sexual abuse and molestation coverage.</p> <p>14 SENATOR PETERSON: Doesn't the same problem    15 exist with Workers' Comp coverage, and, again, it goes    16 back to something -- and I handled Workers' Comp for    17 many years for the Department of Labor and the number of    18 companies that would cover just kept getting smaller and    19 smaller and when we asked why they said because Delaware    20 is just such a little itty-bitty market and many have to    21 pay for the claims of the few. Same arguments. So is this    22 unique to SAM or is this unique to Workers' Comp    23 and every other kind of insurance?</p> <p>24 MR. MATTHEW DOYLE: No. This is</p>

<p style="text-align: right;">Page 198</p> <p>1 particularly unique to SAM.</p> <p>2 SENATOR PETERSON: Aren't we down to about</p> <p>3 three Workers' Comp insurers now in Delaware, only</p> <p>4 three?</p> <p>5 MR. MATTHEW DOYLE: No. Unh-unh, no.</p> <p>6 SENATOR PETERSON: Last I heard we were.</p> <p>7 MR. MATTHEW DOYLE: No. You were</p> <p>8 misinformed.</p> <p>9 SENATOR PETERSON: How many do we have?</p> <p>10 MR. MATTHEW DOYLE: Probably about 35 or</p> <p>11 40, not counting what goes through the -- what you can</p> <p>12 get through the plan.</p> <p>13 SENATOR PETERSON: All right.</p> <p>14 MR. MATTHEW DOYLE: What you have run into</p> <p>15 with Delaware, more than anything, again I'm from out --</p> <p>16 I'm from Pennsylvania so it's a whole different arena,</p> <p>17 is the fact that most insurance companies are domiciled</p> <p>18 in Delaware, and as a result because of certain rules</p> <p>19 and laws pertaining to participation and taxes they do</p> <p>20 not write in the state.</p> <p>21 SENATOR PETERSON: That was my question. I</p> <p>22 didn't ask how many are domiciled here. I asked how</p> <p>23 many are selling.</p> <p>24 MR. MATTHEW DOYLE: Well, that's -- that's</p>	<p style="text-align: right;">Page 200</p> <p>1 coverage that's an add-on that has catastrophic exposure</p> <p>2 to it.</p> <p>3 SENATOR PETERSON: All right. My last --</p> <p>4 my last comment, really it's a comment to the chairman</p> <p>5 about this slippery slope idea that if we open this</p> <p>6 look-back period, you know, then the doors open for</p> <p>7 medical malpractice and all that. I would suggest that</p> <p>8 in California the Bill passed five years ago and I'm not</p> <p>9 aware of any look-back period since then. I think the</p> <p>10 difference here is that we're talking about little</p> <p>11 children who didn't know what happened. If I was in a</p> <p>12 car accident I know what happened. I know what happened</p> <p>13 as soon as I come to in the emergency room. Little kids</p> <p>14 at the age of five or seven or nine are not aware of</p> <p>15 what happened and I think that's the difference.</p> <p>16 REPRESENTATIVE VALIHURA: I was just making</p> <p>17 it a discussion topic. It had nothing to do with my</p> <p>18 position on anything other than as being a thorough</p> <p>19 chairperson of this committee. I throw issues out for</p> <p>20 discussion. Thank you. Representative Hudson.</p> <p>21 REPRESENTATIVE HUDSON: Mr. Chair, may I go</p> <p>22 back again? You said this gentleman was here, invited</p> <p>23 here to speak on policy. Is that --</p> <p>24 REPRESENTATIVE VALIHURA: No. No. I</p>
<p style="text-align: right;">Page 199</p> <p>1 a big part of the answer to your question. That if</p> <p>2 there is 3800 insurers in the United States you're --</p> <p>3 because of domiciling you have cut yourself down to</p> <p>4 maybe 500 or 750 of that 3800.</p> <p>5 SENATOR PETERSON: My question was how many</p> <p>6 companies are selling Workers' Comp to Delaware</p> <p>7 companies?</p> <p>8 MR. MATTHEW DOYLE: Oh. Many. I have 25</p> <p>9 in my office alone that I can use.</p> <p>10 SENATOR PETERSON: To sell to Delaware</p> <p>11 companies?</p> <p>12 MR. MATTHEW DOYLE: Yes.</p> <p>13 SENATOR PETERSON: All right. Because they</p> <p>14 made the same dire predictions during the debate on the</p> <p>15 Workers' Comp Reform Act of 1997. They said exactly the</p> <p>16 same thing, that if we passed that Bill then the number</p> <p>17 of insurers was going to go away, people were going to</p> <p>18 be thrown into the higher risk pool, and just the sky is</p> <p>19 going to fall and all that, so we heard the same</p> <p>20 arguments in '97 against Workers' Comp that you're</p> <p>21 telling us today about this legislation. So it didn't</p> <p>22 come true then, the dire predictions on Workers' Comp?</p> <p>23 MR. MATTHEW DOYLE: Not that everybody left</p> <p>24 the state but you're talking about a supplemental</p>	<p style="text-align: right;">Page 201</p> <p>1 believe he's -- I mean, my understanding is he's not</p> <p>2 here to testify for or against it. I mean, he's clearly</p> <p>3 uncomfortable saying one thing or the other. He's not a</p> <p>4 Delaware resident.</p> <p>5 REPRESENTATIVE HUDSON: Right.</p> <p>6 REPRESENTATIVE VALIHURA: And he's here to</p> <p>7 talk about the insurance ramifications.</p> <p>8 REPRESENTATIVE HUDSON: From Mr. Zutz's</p> <p>9 company.</p> <p>10 REPRESENTATIVE VALIHURA: From Mr. Zutz's,</p> <p>11 and, by the way, it is my insurance company, too, so I</p> <p>12 appreciate you being here.</p> <p>13 REPRESENTATIVE HUDSON: Well, so that puts</p> <p>14 you in a, not as a gentleman here to talk about State</p> <p>15 policy, but you're here talking about your company, the</p> <p>16 way your company works and what you see through the eyes</p> <p>17 of your company?</p> <p>18 MR. MATTHEW DOYLE: I do the marketing</p> <p>19 for --</p> <p>20 REPRESENTATIVE HUDSON: Yes, but I suggest</p> <p>21 to my colleagues if we want to talk about policy and how</p> <p>22 things are going, our insurance commissioner is probably</p> <p>23 a better one.</p> <p>24 REPRESENTATIVE VALIHURA: Indeed, I reserve</p>

<p style="text-align: right;">Page 202</p> <p>1 the right to call Mr. Vild to the stand but this is from    2 the business side. I mean clearly it's from the    3 business side.</p> <p>4 REPRESENTATIVE HUDSON: I understand, but    5 I'm not sure that it was clear that this is -- that you    6 were here speaking on behalf of your business.</p> <p>7 REPRESENTATIVE VALIHURA: Well, I mean, I    8 don't think it's just his business. I think it's the    9 industry. I mean, his business is recognized as the    10 leader in the State. I mean, we have had -- we have had    11 several before us in other forums that I have dealt with    12 and Zutz Insurance is regarded as, you know, the    13 Wilmington Trust of Delaware, let's put it that way.</p> <p>14 REPRESENTATIVE HUDSON: Right. Which leads    15 me to say next then if you are such a large company you    16 don't just operate in Delaware. You know what's going    17 on in other states. You insure people in other states.</p> <p>18 MR. MATTHEW DOYLE: Yes.</p> <p>19 REPRESENTATIVE HUDSON: Somehow, someone in    20 your company must know the effects of the other states    21 that have had this type of legislative change and --</p> <p>22 REPRESENTATIVE VALIHURA: Are you asking    23 for it? If you're asking for it, I'll ask for it, too.</p> <p>24 REPRESENTATIVE HUDSON: I'm wondering why</p>	<p style="text-align: right;">Page 204</p> <p>1 thank you so much for being here with us this afternoon.</p> <p>2 MR. MATTHEW DOYLE: You're welcome.</p> <p>3 REPRESENTATIVE VALIHURA: Mr. Vild, please    4 join us at the podium. If you could just state your    5 name for the record, the tape is running.</p> <p>6 MR. MICHAEL VILD: Michael Vild, Deputy    7 Insurance Commissioner.</p> <p>8 REPRESENTATIVE VALIHURA: Thank you very    9 much for being here. You have been here all afternoon.</p> <p>10 We really appreciate it. We appreciate Mr. Denn's    11 making sure that you're available for us here at this    12 committee hearing.</p> <p>13 MR. MICHAEL VILD: It's my pleasure to be    14 here. I'll just say with respect to the last question    15 regarding the effects in other states that have had    16 these types of programs put in, we have reached out to    17 the Insurance Department in California but I don't yet    18 have an answer back from them with respect to the answer    19 to your specific question. As soon as that -- as soon    20 as we get that information we'll provide it to the    21 committee.</p> <p>22 REPRESENTATIVE VALIHURA: That would be    23 great. We had a chance to read Mr. Denn's letter to the    24 committee and also I want to just ask the question I</p>
<p style="text-align: right;">Page 203</p> <p>1 you aren't here to talk about that because that's really    2 pertinent. I mean you're talking about what ifs, but    3 can't we find out --</p> <p>4 MR. MATTHEW DOYLE: I am here to speak    5 about what effect it will be on Delaware. I do not know    6 about California, because California to me is in another    7 world and Texas also. What happens in those two --    8 they're almost like foreign countries when you talk to    9 insurance carriers.</p> <p>10 REPRESENTATIVE HUDSON: Is that right? I    11 just figured since you were such a large company, sixth    12 largest in the world.</p> <p>13 MR. MATTHEW DOYLE: We are Zutz Insurance.    14 We just recently became part of the HRH family of    15 companies.</p> <p>16 REPRESENTATIVE HUDSON: It just surprised    17 me that you weren't aware of more beyond your state or    18 Delaware. Thank you.</p> <p>19 REPRESENTATIVE VALIHURA: Could we ask you    20 to provide us with that information? Could you have    21 someone in your office look at that for us?</p> <p>22 MR. MATTHEW DOYLE: Surely.</p> <p>23 REPRESENTATIVE VALIHURA: That would be    24 great. Any other questions? Seeing none, Mr. Doyle,</p>	<p style="text-align: right;">Page 205</p> <p>1 originally had posed, is there likelihood that if we    2 start going down this route of opening up older claims    3 that we may be viewed by the insurance companies in the    4 future as being -- having an exposure that they're not    5 particularly geared to accepting or understanding they    6 were and that may ultimately cascade into higher rates    7 in the future.</p> <p>8 MR. MICHAEL VILD: I'm uncomfortable    9 answering a question where I'm asked to look into the    10 mind of an insurance company. But what I can say is    11 based on the experience that we have had on many issues    12 the immediate response that we get when we attempt any    13 regulatory reform or legislative proposal that the    14 industry is -- dislikes is the - I am going to use the    15 word threat but I'm not sure that's the right word - to    16 leave the state, and it is -- it's an issue that we are    17 particularly concerned about in a state the size of    18 Delaware and it does -- it does have an effect on how we    19 regulate the industry because maintaining a vibrant    20 market is the best way to control rates.</p> <p>21 REPRESENTATIVE VALIHURA: Okay. Do they    22 also threaten that they have to raise their rates, too?</p> <p>23 MR. MICHAEL VILD: Sure.</p> <p>24 REPRESENTATIVE VALIHURA: Sure. And do</p>

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1 some of them do so?	1 SENATOR PETERSON: It's an internal joke.
2 MR. MICHAEL VILD: The -- I mean the way	2 REPRESENTATIVE VALIHURA: There is some
3 rates are calculated Delaware's specific experience is	3 members of the chamber who would certainly do that and I
4 actually a very small piece in the whole rate setting	4 have now taken on making sure those kind of things get
5 process. They use nationwide, nationwide data of which	5 the opportunity to -- everyone gets an understanding
6 Delaware data is entitled to some weight but because of	6 that it is coming up. So having made that
7 the small size of the state from an actuarial	7 representation, is there a motion at this time? Yes.
8 perspective the Delaware data does not get substantial	8 Representative Johnson.
9 weight in rate setting. It's done more on a --	9 REPRESENTATIVE JOHNSON: I move to release.
10 actuarially speaking on a nationwide basis although the	10 REPRESENTATIVE VALIHURA: We have a motion
11 Delaware data does have some impact on our rates.	11 to release -- you know what -- 29, Senate Bill 29, I
12 REPRESENTATIVE VALIHURA: And since we only	12 like that, sort of hit the bottom of my -- all the
13 have one state that's done this it would be difficult to	13 papers piled up on top of that. Senate Bill 29, a
14 understand what those rates might be?	14 motion and a second has been made. The second was made
15 MR. MICHAEL VILD: Well, I think that's	15 by Representative Mitchell, I'm saying that for the tape
16 right, but I think it's also fair to say that the one	16 recorder on the other side of the room there. All those
17 state that did it is, you know, I think the fifth	17 in favor of releasing Senate Bill Number 29 say aye.
18 largest economy in the world or something along those	18 Aye.
19 lines.	19 (Whereupon various members responded aye.)
20 REPRESENTATIVE VALIHURA: Right.	20 REPRESENTATIVE VALIHURA: Anyone opposed?
21 MR. MICHAEL VILD: So it's not as if, you	21 Seeing no opposition and having the five requisite
22 know, Maine it was the only state that we had to look	22 members to release the Bill, the Bill will be released,
23 for for some experience. California is a substantial	23 and I appreciate everyone's attendance today and
24 population and the effect there would -- would be	24 appreciate your courtesy and it's one of the longest
Page 207	Page 209
1 telling.	1 committee meetings we have ever had and we do appreciate
2 REPRESENTATIVE VALIHURA: Okay. So we'll	2 it. Thank you. We stand adjourned.
3 wait for your response.	3
4 MR. MICHAEL VILD: I hoped to have that	4
5 information today but I have not been able to gather it	5
6 yet.	6
7 REPRESENTATIVE VALIHURA: Thank you. Other	7
8 questions of Mr. Vild? Seeing none, thank you very	8
9 much, Mr. Vild. I appreciate you being here.	9
10 MR. MICHAEL VILD: Thank you.	10
11 REPRESENTATIVE VALIHURA: At this point we	11
12 have reached the end of our list of speakers. The	12
13 members of the committee have -- actually we do have a	13
14 quorum, which is good. We have already heard from one	14
15 of our members as to what his position is on the	15
16 legislation. Before we go to the next point here, I am	16
17 going to ask the sponsor of the Bill before we take the	17
18 next step that whether if, in fact, we do release the	18
19 legislation today that you will not put it on Tuesday's	19
20 agenda when we come back?	20
21 SENATOR PETERSON: I'm insulted that you	21
22 would say that because it has to go to JFC.	22
23 REPRESENTATIVE VALIHURA: Oh, I'm not -- I	23
24 was not insulting you.	24

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1 State of Delaware      }  
2                        }  
3 County of New Castle    }

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7        C E R T I F I C A T E

8

9        I, Elaine G. Parrish, Registered Professional  
10 Reporter and Notary Public, do hereby certify that the  
11 foregoing record, pages 1 to 210 inclusive, is a  
12 transcript of my stenographic notes taken from an  
13 audiotape in the above-captioned matter.

14        IN WITNESS WHEREOF, I have hereunto set my  
15 hand and seal this 16th day of September, 2007, at  
16 Wilmington.

17

18

19

*Elaine G. Parrish*  
Elaine G. Parrish  
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**In The Matter Of:**

# **House Judiciary Committee of Delaware**

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**Audiotaped Hearing - Act to amend Title 10 of the Delaware  
Code**

**Senate Bill 29**

**May 29, 2007**

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**In The Matter Of:**

# **House Judiciary Committee of Delaware**

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**Audiotaped Hearing - Act to amend Title 10 of the Delaware  
Code**

**Senate Bill 29**

**June 19, 2007**

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Tape Recorded Hearing

Before the House of Representatives of Delaware

IN RE: SENATE BILL 29: An Act to amend Title 10 of the Delaware Code by removing the statute of limitations for civil suits relating to child sexual abuse and adding related provisions regarding such suits.

The following is an audiotaped hearing before the House Judiciary Committee held on June 19, 2007, transcribed by Elaine G. Parrish, RPR, CRR.

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<p>1 SPEAKER OF THE HOUSE: We're getting ready  2 to debate Senate Bill 29, and as all of us know in this  3 chamber it's a very emotional issue. There will be some  4 testimony today that will be very emotional, very  5 graphic, perhaps, and what we ask is that we all - and I  6 know I don't have to tell this chamber that because  7 that's how we operate almost a hundred percent of the  8 time - but I would ask that we be courteous to each  9 other, courteous to the witnesses, and be patient as we  10 work through this debate. You all know that this is not  11 going to be a 15-minute Bill.</p> <p>12 We're going to try to restrict the comments  13 to what's pertinent to the Bill and we'd ask that we try  14 to refrain from repeating comments that the previous  15 speaker or witness has made so that we can do this  16 expeditiously as possible, yet give it the time and  17 proper vetting that obviously this Bill deserves. We  18 have -- both caucuses have talked about the Bill at  19 length in caucuses, and so I would ask that we comply  20 with those things I just mentioned.</p> <p>21 So with that, sir, I'd like to yield to  22 Representative Hudson to work Senate Bill 29.</p> <p>23 The Honorable Representative Deborah  24 Hudson.</p>	<p>1 abusers, and they can sue any legal entity if there is  2 gross negligence; and, third, it permits a person or a  3 legal entity who has been falsely and maliciously  4 accused of child sexual abuse to recover attorneys fees.</p> <p>5 Now here is just a couple quick facts to  6 get the tone of the Bill. Why do we need this? Why  7 have we been talking about this so much? One in five  8 children are sexually abused. That's one in four girls  9 and one in six boys. The average age of a sexually  10 abused child is nine. One quarter of female victims  11 were abused at age five or younger. Nearly a third of  12 all rapes in the United States are committed against  13 girls younger than 11. 20 percent of them are raped by  14 their own fathers.</p> <p>15 Child sex abuse is rarely a one-time  16 occurrence. The abusive relationship usually begins  17 when a child is between six and eight and lasts for four  18 years. Although girls are sexually abused more than  19 boys, boys are more likely to die or to be seriously  20 injured from their abuse.</p> <p>21 Now what do we know about the molesters?  22 We know that 85 percent of these cases involve family  23 members or friends and relatives. Less than ten of  24 these cases involve teachers or clergymen, and</p>
Page 3	Page 5
<p>1 REPRESENTATIVE HUDSON: Thank you,  2 Mr. Speaker. Could I have Senate Bill 29 read in for  3 the third and final time, please?</p> <p>4 SPEAKER OF THE HOUSE: Mr. Clerk.</p> <p>5 THE CLERK: Mr. Speaker, Senate Bill number  6 29 sponsored by Senator Peterson and Senator McBride,  7 Representative Hudson and Representative Lavelle and  8 other Senators and Representatives, an act to amend  9 Title 10 of the Delaware Code by removing the statute of  10 limitations for civil suits relating to child sexual  11 abuse and adding related provisions providing such suits  12 regarding such suits.</p> <p>13 Mr. Speaker, this constitutes the third and  14 final reading of Senate Bill number 29 by title only.</p> <p>15 SPEAKER OF THE HOUSE: Thank you,  16 Mr. Clerk. Senate Representative Mrs. Hudson.</p> <p>17 REPRESENTATIVE HUDSON: Well, thank you,  18 Mr. Speaker. Senate Bill 29, as a reminder to everyone  19 in here, does three things: First, it repeals the  20 two-year civil statute of limitations in child sexual  21 abuse cases; second, it provides a look-back period  22 during which victims whose cases have previously been  23 barred by this current ridiculous two-year statute of  24 limitations that they can come forward and sue their</p>	<p>1 interestingly enough, the typical child molester turns  2 out to be a Caucasian, heterosexual, married man who  3 considers himself to be religious. On average he will  4 molest between three and 12 children and will average  5 seven to 71 acts of molestation.</p> <p>6 Some of my colleagues asked that I not  7 bring out the gory details but how can you feel good and  8 work hard on a Bill unless you know the terror behind it  9 and that's why I want to bring this up and that is why I  10 wanted to first start with a witness on this Bill that  11 is a victim.</p> <p>12 REPRESENTATIVE CATHCART: Mr. Speaker?  13 SPEAKER OF THE HOUSE: Yes. Representative  14 Cathcart.</p> <p>15 REPRESENTATIVE CATHCART: Before we get  16 into the witnesses I failed to mention something. I  17 know that typically we work the amendments first and we  18 thought for the efficiency of time that we would bring  19 the witnesses up first and then we'll come back and work  20 the amendments. So just let me mention that before  21 someone else does.</p> <p>22 REPRESENTATIVE HUDSON: Thank you.  23 SPEAKER OF THE HOUSE: Thank you.  24 REPRESENTATIVE HUDSON: That was a good</p>

2 (Pages 2 to 5)

<p style="text-align: center;">Page 6</p> <p>1 idea. So to follow up on my discussion about why we're 2 here and what the terror is and why we as legislators 3 need to pass this law. I would like to bring a victim 4 who lived in Delaware but has now moved to Florida but 5 yet he drove here today to speak and his name is Mr. Rob 6 Quill and make sure you come to the podium and make sure 7 you talk closely into the mic because there is so many 8 people here in the room and we want to hear you.</p> <p>9 SPEAKER OF THE HOUSE: Welcome to the 10 chamber, sir. If you would give your name for the 11 record.</p> <p>12 MR. ROBERT QUILL: Mr. Speaker, Honorable 13 members, my name is Robert Quill. I'm 52 years old and 14 I currently live in Marathon, Florida and have come here 15 once again to Delaware at my own expense to testify here 16 today. I was born and raised in Wilmington, Delaware. 17 My family lived in and were members of the St. Elizabeth 18 Parish. I attended St. Elizabeth Schools and graduated 19 from its high school in 1973. My last job was as a 20 supervisory staff attorney for the United States Court 21 of Appeals for the 11th Circuit located in Atlanta, 22 Georgia. I had been employed as a lawyer by the court 23 for 15 years before retiring on disability.</p> <p>24 I was placed on full permanent disability</p>	<p style="text-align: center;">Page 8</p> <p>1 with these unspeakable almost unimaginable experiences 2 of my adolescence. I am here to tell you that I am not 3 a whole person and never will be. I'm unable to form 4 the simple human relationships that whole people take 5 for granted. Without the basic confidence which is so 6 profoundly absent in victims of childhood sexual abuse I 7 fail the most basic social interactions and 8 relationships that in life tend to make all the work 9 worth the effort. I live alone, and, indeed, it is 10 nearly paralyzingly difficult for me to be here today.</p> <p>11 In a bitter irony, no matter how hard I 12 worked, no matter how professionally successful I 13 became, despite my best efforts, in nearly all matters 14 not related to my work I suffered through unending years 15 of blistering and humiliating social experiences picking 16 my way through life pretending I was okay. In reality I 17 was one of the walking dead, a mere bystander to life. 18 A sense of unworthiness and doom overtook me with 19 recurring bouts of depression leading to a nausea for 20 life that eventually became unbearable. Spirit broken, 21 I stopped believing and just stopped functioning.</p> <p>22 No longer able to make sense of my life I 23 was fast approaching a decision to end my life as this 24 would be the only relief I would get from a fractured</p>
<p style="text-align: center;">Page 7</p> <p>1 status by my psychiatrist in 2002 after a diagnosis of 2 severe post-traumatic stress disorder syndrome which was 3 a direct result of the many years of sexual abuse I had 4 been subjected to at the hands of the Roman Catholic 5 priest, Francis G. DeLuca. The sexual abuse began in 6 1968 when I was only 13 years old during a week-long 7 summer alter boy trip to the beach at Wildwood, New 8 Jersey. The abuse continued intensely for many years 9 thereafter. The gory details I will leave out here 10 today but leave them to your imagination. Suffice it to 11 say, this man haunted my entire adolescence, invaded and 12 violated my private parts, invaded and violated my most 13 private moments, events and functions of my life. He 14 invaded and violated my mind and soul. While I am 15 incapable of recalling exactly when the actual sexual 16 abuse finally stopped, its effects never ended. I know 17 that the residual effects profoundly damaged the 18 relationship I had with my parents as well as with my 19 brothers and sisters. Moreover, it led to my decision 20 to move away from Delaware 30 years ago.</p> <p>21 For over 30 years I have lived with these 22 memories isolated in the deep recesses of my mind. 23 Somehow my psyche learned to lock them away and 24 quarantine them. This was the only way I could cope</p>	<p style="text-align: center;">Page 9</p> <p>1 and tortured psyche. It turns out that the priest who 2 sexually abused me is a prime example, perhaps the 3 touchstone for exactly why this legislative body should 4 pass the Child Victim's Act, Senate Bill 29, unamended. 5 The Diocese's attorney acknowledged before the House 6 Judiciary Committee a few weeks ago that the Diocese had 7 information in its files dating back to as far as 1962 8 that Francis DeLuca had an appetite for adolescent boys, 9 but for nearly 45 years and under at least four 10 different Bishops nothing was done except to transfer 11 him from one unsuspecting parish to another where he 12 apparently molested adolescent boys in each of the six 13 parishes to which he had been assigned.</p> <p>14 In 1993 this priest was secretly relieved 15 from active ministries in Delaware and allowed to 16 quietly retire with a Diocesan-paid pension to his 17 hometown in Syracuse, New York. And while it was 18 circulated that he had retired for health reasons, no 19 mention was ever made publicly of his sexual abuse of 20 adolescent boys, nor even were civil or church 21 authorities in Syracuse ever informed that this retired 22 priest was a recidivist child sex offender. But the 23 priest did not stop or alter his pattern of predation. 24 His current criminal arrest there is for molesting his</p>

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<p style="text-align: right;">Page 10</p> <p>1 own great nephew for approximately five years from his 2 ages 13 through 17. In fact, this 77 year old man now 3 faces the loss of liberty because those who should have 4 known better did nothing to protect this priest even 5 from himself, not to mention how gravely absent they 6 weren't protecting the rest of us from the likes of him. 7       It was not until this priest was arrested 8 this past October that the Diocese of Wilmington 9 reluctantly released the names of nearly two dozen 10 sexual predator priests. Noteworthy, though, is that 11 while the Diocese had at long last so easily released 12 the names of these predator priests after having fought 13 for decades not to do so it still refuses to acknowledge 14 its own role. 15       I am left to wonder who is this God who 16 rapes his children. These were horribly misguided men. 17 I can not comprehend how so many well-trained, 18 highly-educated Bishops and priests alone and behind 19 closed doors decided it was best to hide and conceal 20 criminal conduct and simply transfer -- to transfer this 21 priest from one place to another where his conduct went 22 unabated for nearly 50 years. These were cold, 23 calculated decisions among men who operated as if they 24 alone knew what was best for this priest, his victims</p>	<p style="text-align: right;">Page 12</p> <p>1 Diocesan lawyer in responding to questions also informed 2 the Judiciary Committee a few weeks ago that it had 3 active files from nearly 45 victims of clergy child sex 4 abuse occurring before 1987 while holding only 15 active 5 files for children victims whose abuse occurred after 6 1987. 7       The Diocese's suggestion without legitimate 8 rationale reason that it now supports a look-back 9 provision but only as far back as 1987 is frivolous on 10 its face. Such an approach could -- capriciously and 11 arbitrarily foreclose the claims of 75 percent of its 12 active files for no other reason than that they might be 13 too costly or burdensome to defend. It suggests without 14 credible explanation that those older cases would be 15 impossible to defend as many of the offenders may no 16 longer be alive. Moreover, such an approach would not 17 just artificially foreclose 75 percent of the potential 18 claims against the Diocese but would also foreclose the 19 pre-1987 claims of all those other non-institutional 20 cases. Recall that 85 percent of all cases occur as a 21 result of incest or intra family child sexual abuse. 22 Consequently, such an approach would effectively cut the 23 Bill's power to protect children by identifying those 24 past abusers who are still circulating freely in</p>
<p style="text-align: right;">Page 11</p> <p>1 and more importantly for themselves as his enablers. 2       I suggest that this legislative body knows 3 best how to protect Delaware citizens, particularly its 4 children from those predators and their enablers who 5 have and will continue to do them harm. I am left with 6 the unescapable conclusion that most of DeLuca's damage 7 could have been avoided had his institutional enablers 8 reported his crimes to authorities when they first 9 became aware of them. 10       Who can credibly argue that this pervasive 11 pattern of abuse would not have occurred unabated for 50 12 years without the active assistance of this priest's 13 institutional employers. How many victims could have 14 been spared had this man's crimes been -- had not been 15 covered up? We may never know the answer to this 16 question, but we must do our best to answer the question 17 as it pertains to the potential victims. 18       I am convinced that holding the responsible 19 institution liable for their past behavior, their past 20 victims, will control their future behavior and prevent 21 another generation of our children from becoming victims 22 of this insidious pattern. This Bill in its original 23 unamended form will do precisely that. To be sure my 24 remarks here today are not just about me. Again, the</p>	<p style="text-align: right;">Page 13</p> <p>1 society. Whose good shepherd is this that lobbies to 2 cut off the relief to 75 percent of the known victims? 3 Clearly those victims cannot be left behind here. 4       Moreover, the Diocese has suggested through 5 its lobbyists efforts that it stands ready, willing and 6 able to assist all victims with counseling, medical 7 expenses and lump sum settlements to make them whole 8 irrespective of the Bill's reach. One is left to wonder 9 how the Diocese could so easily settle these claims 10 through some nondescript mediation process with 11 undefined rules regulating procedures if it would find 12 it impossible to defend these claims in the already 13 time-honored, time-tested process called the courts of 14 law under the Civil Procedures Act and the rules of 15 evidence. 16       Taking the Diocese at their word then it 17 should therefore not oppose the unamended enactment of 18 Senate Bill 29 in as much as it purports a willingness 19 to do exactly what the codified Bill would require it to 20 do. Essentially Senate Bill 29 would hold the Diocese 21 to its good word in the manner that trusts, but 22 verifies, under threat of compulsory legal process. 23 Moreover, the Diocese's quiet settlement approach would 24 also gut the Bill of its important effect of publicly</p>

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1 identifying those sexual predators who may be still  
 2 exposing children to sexual abuse.

3 I stand before you today on behalf of  
 4 hundreds, if not thousands, of Delaware victims of  
 5 childhood sexual abuse. I urge this legislative body to  
 6 act decisively by unanimously passing Senate Bill 29,  
 7 the Child Victim's Act, unamended. Decent civilized  
 8 society needs the names of those child sexual predators  
 9 and to expose those who enable them. Absent that, those  
 10 enablers will have succeeded once again as they will  
 11 remain unaccountable for their conduct. Thank you for  
 12 allowing me to speak here today.

13 SPEAKER OF THE HOUSE: Thank you, sir, for  
 14 being with us. Thank you very much.

15 Representative Hudson.

16 REPRESENTATIVE HUDSON: Thank you,  
 17 Mr. Quill. At this time Representative Valihura has a  
 18 witness he would like to introduce.

19 SPEAKER OF THE HOUSE: Representative  
 20 Valihura.

21 REPRESENTATIVE VALIHURA: Thank you,  
 22 Mr. Speaker. It is my honor as Chairman of the  
 23 Judiciary Committee to introduce the dean of the  
 24 Villanova University Law School, Dean Mark Sargent, and

1 I want to begin by expressing my regret,  
 2 the regret I feel in both testifying and writing about  
 3 the deficiencies of this type of legislation. As any  
 4 person of good faith, my heart is with the innocent  
 5 victims, not with the molesters or their enablers. I  
 6 wish I could indulge in the uncomplicated, righteous  
 7 fury that so many victims and their advocates and  
 8 ordinary people feel and not be in the position of  
 9 criticizing their legislative proposals. I also regret  
 10 that principal criticism of legislation such as Senate  
 11 Bill 29 too often is met with rancor, accusations of  
 12 insensitivity or indifference to the plight of victims,  
 13 or, even worse, a corrupt desire to curry favor with the  
 14 Bishops. I come before you as a lawyer, a student of  
 15 the law. A concerned citizen and a concerned Catholic  
 16 who believes there is a better way to serve the goals  
 17 that we all share of preventing and punishing sexual  
 18 abusive children.

19 I'm sure that you have all heard the  
 20 arguments establishing the deficiencies of Senate Bill  
 21 29, so I'll restate them only briefly. First of all,  
 22 statutes of limitation are often referred to as  
 23 technicalities or loopholes behind which the church  
 24 cynically hides. The statutes are often challenged by

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1 if we could have the privilege of the floor for Mr.  
 2 Sargent I'd appreciate it.

3 SPEAKER OF THE HOUSE: Yes, sir.  
 4 Absolutely. Thank you. Welcome to the chamber, sir.  
 5 Once again, if you'd give your name for the record.  
 6 Thank you.

7 MR. MARK SARGENT: Mr. Speaker,  
 8 distinguished members of the House, I'm Mark Sargent,  
 9 dean and professor of law at Villanova University School  
 10 of Law in Pennsylvania. Thank you for the opportunity  
 11 to address this distinguished body. I'll begin by  
 12 saying that the views and opinions I express here are  
 13 solely my own and do not purport to represent the views  
 14 of Villanova University or its School of Law.

15 I also want to state that I am not being  
 16 compensated for my testimony. I do not represent and  
 17 have never represented for compensation or otherwise the  
 18 Diocese of Delaware, any other Diocese, parish,  
 19 religious order, cleric or other individual in sexual  
 20 abuse or other legal matters. I am here today to  
 21 express my personal concern about legislation that is  
 22 obviously well intentioned, but would, in its present  
 23 form, undermine the administration of justice and  
 24 constitute bad public policy.

1 the rhetorical question: How can justice be time  
 2 barred, as if the answer to that question were obvious  
 3 and if statutes of limitation did not themselves ever  
 4 serve justice. But as you undoubtedly know, statutes of  
 5 limitation are not mere technicalities. They exist for  
 6 a reason or for several reasons. Evidence ages, parties  
 7 and witnesses age, disappear or become legally  
 8 incompetent, uncertainty and ambiguity grows with time.  
 9 Also there are sound public policy reasons for  
 10 encouraging people to come forward with claims promptly  
 11 and there are mechanisms for tolling the statute of  
 12 limitations when they are prevented from doing so.

13 Regardless of what one thinks about the  
 14 behavior of molesters, or of the Diocese, Bishops or  
 15 Diocesan officials and whatever moral opprobrium they  
 16 have incurred as Defendants in our legal system, they  
 17 are as entitled to the benefits of the civil justice  
 18 system as anyone else.

19 Second, the need for limitations, the  
 20 statute of limitations, is particularly acute when the  
 21 civil suit is not against an abusive priest who is often  
 22 judgment proof, but against Diocese, Bishops and  
 23 Diocesan officials. In such cases the issue is usually  
 24 not whether an individual priest actually abused an

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<p style="text-align: right;">Page 18</p> <p>1 individual child but whether those responsible for him 2 in some way facilitated, either affirmatively or 3 passively, his behavior in a way that would make them 4 liable for damages. These cases turn on relatively 5 subtle legal theories, are usually grounded in some kind 6 of negligence, and are often ambiguous factually. To be 7 sure, the Diocese will have extensive records that may 8 shed light on the matter and in some cases they obtain a 9 smoking gun. The records often will not be dispositive 10 of the matter. Eliminating the statute of limitations 11 entirely will make it very difficult for judges and 12 juries to do justice in very old cases.</p> <p>13       Third, it has been argued that eliminating 14 the statute of limitations will not create a problem. 15 The plaintiff, after all, has the burden of proof and 16 the jury can simply sort things out as they always do. 17 I'm not here to argue that the jury system is deficient. 18 I will always -- I will point out, however, that the law 19 has always regarded juries as inherently fallible. In 20 fact, the law of evidence exists in part to exclude from 21 juries evidence whose reliability a jury cannot fairly 22 assess. The law strives to make decision making by 23 juries more rational and predictable rather than less. 24 Eliminating the statute of limitations would have the</p>	<p style="text-align: right;">Page 20</p> <p>1 prospectively. Opening a window will, as it has in 2 California, revive truly ancient cases. In California 3 the courts have had to contend with claims dating back 4 to the 1930s, 1940s and 1950s. Opening a window can 5 also create enormous liabilities as has happened in 6 California, raising serious questions about 7 proportionality and the impact of abuse settlements or 8 verdicts on the beneficiaries of the church's 9 charitable, educational and spiritual programs. 10 Retroactively reviving time-barred claims is actually 11 far more dangerous than prospectively eliminating the 12 statute which at least will give institutions the 13 opportunity to plan to some extent.</p> <p>14       Finally, let me comment on the simplest 15 argument made in support of opening the window for 16 time-barred claims, i.e. the argument that the church 17 can afford it. That claim is based on an entirely too 18 optimistic view of what Catholic Dioceses actually have, 19 an entirely too narrow view of what it actually needs to 20 perform its mission, or, I dare say, even an 21 indifference to whether the church should be able to 22 perform its mission.</p> <p>23       The recent spate of Diocesan bankruptcies 24 was caused not by a cynical desire to avoid trials that</p>
<p style="text-align: right;">Page 19</p> <p>1 opposite effect by confronting juries with cases they 2 should not be required to decide. They will find it 3 difficult to decide those cases fairly when the evidence 4 and testimony is incomplete, uncertain or unavailable or 5 when standards of behavior, social values and 6 relationships have changed.</p> <p>7       As to the burden of proof, the playing 8 field is really not level between the plaintiff and 9 defendants in this kind of case. The plaintiff has a 10 structural advantage. The victim can always testify. 11 Whether witnesses favorable to the defense can testify 12 is a far more questionable matter given the passage of 13 time.</p> <p>14       Achieving justice is not merely a matter of 15 opening the courthouse door. It is also a matter of 16 what happens when you are inside.</p> <p>17       Let me turn now to the most troubling 18 aspect of Senate Bill 29, the idea of a two-year window 19 for reviving time barred claims. This sounds simple, 20 innocuous and only fair. It's just a, quote, look-back 21 which sounds harmless but there is much to be said 22 against it. Eliminating the statute of limitations 23 retrospectively undermines the basic purposes of the 24 statute even more clearly than when it's eliminated</p>	<p style="text-align: right;">Page 21</p> <p>1 would expose the truth but a simple recognition that 2 both victims and Dioceses would be saddled with enormous 3 legal costs for an extensive period of time, that church 4 assets will not be sufficient to satisfy the anticipated 5 tort liabilities, and that some sort of orderly 6 settlement is needed so that the church's available 7 assets are not absorbed by the first plaintiffs in the 8 door.</p> <p>9       Furthermore, whether in the bankruptcy 10 context or not, Diocesan abuse settlements have resulted 11 in a significant diminishment of many Dioceses capacity 12 to serve those who rely upon them, particularly their 13 poorest constituencies. A two-year window would 14 guarantee that that would happen in Delaware. I'm sure 15 you have heard or will hear that there hasn't been any 16 serious negative effect on the activities of the church 17 in California. With all due respect, I disagree with 18 that claim. In California the church's capacity to 19 serve is shrinking just as its Catholic population is 20 growing exponentially as a result in the rapid growth of 21 the Latino population. Real property is being sold at 22 the time when it is most needed to accommodate growth in 23 this population. A rise in the rate of closures of 24 Catholic schools has already occurred, especially in</p>

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1 rural and inner city areas that have to be subsidized.  
 2 Lacking liquidity, Dioceses are being  
 3 forced to borrow from commercial lenders in order to  
 4 meet their obligations under the settlements. Churches  
 5 are struggling with insurers who are reluctant to  
 6 contribute to settlements because they believe that  
 7 there are actually viable legal defenses against the  
 8 claim if it were presented in court. So I don't think  
 9 we can dismiss the risk to the constituency served by  
 10 the church.

11 In conclusion, I would respectfully urge  
 12 that the two-year window or any window provision of  
 13 Senate Bill number 29 not be enacted. Thank you.

14 SPEAKER OF THE HOUSE: Thank you for your  
 15 testimony. Representative Hudson.

16 REPRESENTATIVE HUDSON: Yes, of the  
 17 witness, question to the witness, please.

18 SPEAKER OF THE HOUSE: Open dialogue with  
 19 the witness, Representative.

20 REPRESENTATIVE HUDSON: Thank you. Open  
 21 dialogue. Sir, it's interesting that you're following  
 22 what we're doing in Delaware. I'm glad you read the  
 23 News Journal, or how did you know about our case?

24 MR. MARK SARGENT: How did I know about it?

Page 23

Page 25

1 REPRESENTATIVE HUDSON: About our Bill and  
 2 our situation?

3 MR. MARK SARGENT: Well, I have written  
 4 about what's going on in Delaware before.

5 REPRESENTATIVE HUDSON: Were you invited to  
 6 attend today?

7 MR. MARK SARGENT: Yes.

8 REPRESENTATIVE HUDSON: And who was your --  
 9 who invited you to attend?

10 MR. MARK SARGENT: I was invited by the law  
 11 firm of Stradley Ronon.

12 REPRESENTATIVE HUDSON: And did Stradley  
 13 Ronon represent the Archdiocese of Philadelphia in their  
 14 lawsuit?

15 MR. MARK SARGENT: Yes, they did.

16 REPRESENTATIVE HUDSON: So even though you  
 17 are independent you have worked for the law firm that  
 18 has a bias.

19 MR. MARK SARGENT: I do not work for  
 20 Stradley Ronon.

21 REPRESENTATIVE HUDSON: Okay.

22 MR. MARK SARGENT: I do not work for  
 23 Stradley Ronon either as an independent consultant or as  
 24 a lawyer in any capacity. They are familiar with my

1 writing about this, including my writing that was very  
 2 critical of their representation of the Diocese of  
 3 Philadelphia.

4 REPRESENTATIVE HUDSON: Well, I just  
 5 thought that was important to know. I found your  
 6 comments very interesting but they were so strong  
 7 supporting the church. And I would also say that we in  
 8 Delaware, I think you should know this, too, have the  
 9 finest court in the nation, so I don't think they're  
 10 worrying about all your fears that you projected today.

11 One of my colleagues asked if you paid for  
 12 your time here today yourself or if someone paid --  
 13 compensated you money.

14 MR. MARK SARGENT: No one has paid me for  
 15 my time here today.

16 REPRESENTATIVE HUDSON: One of my  
 17 colleagues back here asked me.

18 MR. MARK SARGENT: No one has paid me.

19 REPRESENTATIVE HUDSON: Thank you. That  
 20 was all.

21 SPEAKER OF THE HOUSE: Thank you.

22 Representative Kowalko, questions or comments towards  
 23 the --

24 REPRESENTATIVE KOWALKO: Open dialogue with

7 (Pages 22 to 25)

<p style="text-align: center;">Page 26</p> <p>1           FATHER THOMAS DOYLE: Yes. My name is 2 Thomas Doyle.</p> <p>3           SPEAKER OF THE HOUSE: Yes, sir, you may 4 continue. Thank you.</p> <p>5           FATHER THOMAS DOYLE: Thank you for the 6 opportunity and the privilege to speak before you here 7 today on behalf of boys and girls, men and women who 8 cannot be here and on behalf of their parents. I have 9 been a Catholic priest for 37 years. I consider the 10 most important ministry that I have fulfilled in those 11 years to be the time spent trying to be a support, a 12 friend, an encourager of men and women whose lives have 13 been devastated because of the sexual abuse of clergy, 14 priests and Bishops.</p> <p>15          My experience reaches back 25 years, 24 16 years, to 1984 during which time I was assigned to the 17 Vatican Embassy in Washington, D.C. Over that timespan 18 between then and now I have been involved with victims 19 and their families throughout the United States and in 20 several foreign countries. I have spent more hours than 21 I can count listening to victims and to their mothers 22 and fathers. And if I have a passion and a sustaining 23 strength in all of this, because it is admittedly 24 unbelievably difficult and painful to be part of this</p>	<p style="text-align: center;">Page 28</p> <p>1          And I'd like to say at the beginning of my summary that 2 this issue, the sexual abuse of children and the 3 vulnerable is not a Catholic issue. It's not us against 4 the Catholic Church. It's not a situation of people who 5 want to bleed the Catholic Church of its funds and its 6 money. And at the outset I would like to say the 7 testimony that I have just heard I find to be shocking 8 and surprising and completely removed from my own 9 awareness, which is extensive going back 20 some years.</p> <p>10          So just a couple of anecdotes about 11 California. In California the open window introduced 12 about a thousand cases, I think about 850 of them were 13 cases of time-barred cases who were of sexually abused 14 by clergy or Catholic religious, by religious I mean a 15 brother or a sister. Of these there were only two that 16 were known to have been false arms, false accusations. 17 The largest settlement was a settlement reached in the 18 Diocese of Orange, California for approximately 100 19 million dollars. Half of that was paid by insurance 20 carriers and the other half was a loan which is now paid 21 back. And within the past year the Diocese announced 22 and turned over the first shovel of dirt, as I 23 understand, for a new cathedral that will cost 24 approximately 300 million dollars.</p>
<p style="text-align: center;">Page 27</p> <p>1          movement, part of this phenomena, but my passion is 2 based on the fact that I know the victims. The youngest 3 I have ever spoken with and listened to was a 4 ten-year-old boy and the oldest is a woman who is now 92 5 and only came forward at the age of 89 to speak about 6 the rape she had been subjected to by a Catholic priest 7 over and over and over between the time she was 12 and 8 13.</p> <p>9          And, finally, my passion is definitely 10 strengthened and edged over the past several years 11 because I have experienced this in my own family. The 12 rape of a close family member, not at the hands of a 13 priest but at the hands of a couple of thugs, but I have 14 seen what happens when this goes through your life, the 15 devastation, the destruction, the death, the living 16 death that these people go through. Over the years I 17 have had contact with - extensive and sometimes 18 non-extensive - with more victims than I can count, with 19 their parents, with their friends, their siblings, but 20 also with the priest perpetrators.</p> <p>21          Robert's story about coverup, about 22 deception, about lying, by those who were in charge of 23 his abuser is unfortunately not unique. What you heard 24 that man say to you is the story of tens of thousands.</p>	<p style="text-align: center;">Page 29</p> <p>1          The Catholic Diocese of Oakland in 2 California recently announced the plans for a new 3 cathedral in Oakland. According to the Oakland Tribune, 4 and here I'm quoting from the local newspaper, the 5 city's rising cathedral of Christ the Light complex is 6 the most expensive in American history. This is in the 7 state of California where the church is apparently been 8 financially debilitated because it has been asked to 9 acknowledge the hundreds of victims that it ignored, 10 whose perpetrators it facilitated and hid and lied 11 about.</p> <p>12          But this is not -- it's a Catholic issue 13 only in the sense that the revelations of extensive 14 clergy sexual abuse and the coverup by church leaders 15 have provoked a sharply increased awareness of the 16 almost unbelievable extent of childhood sexual abuse in 17 our society. Ten percent, as Representative Hudson told 18 us, have been abused by teachers or clergy. But this 19 has -- this whole incidence of sexual abuse of children 20 has been under the radar. We haven't wanted to talk 21 about it, acknowledge it, because children are devalued. 22 They're possessions of the parents. You rape a child 23 you get off much more easily in many ways than if you 24 rape an adult.</p>

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<p style="text-align: right;">Page 30</p> <p>1 We have learned in all of this that    2 churches and other institutions will go to scandalous    3 lengths to protect themselves to the detriment of the    4 abuse victims. The vociferous objections and the    5 opposition of churches, including the Roman Catholic    6 Church and other denominations to legislative reform is    7 certainly part of the proof. In state after state the    8 legislative reform has been introduced and been urged.    9 The most vociferous active opponents have been the    10 churches, especially the Catholic Church.</p> <p>11 Another evidence of the fact of the lengths    12 that the churches will go is the trashing of victims in    13 the legal process. I have seen situations where lawyers    14 who have represented Catholic Dioceses have hired    15 private investigators to go through the trash and the    16 garbage of the victims and the witnesses and their    17 families, to interview their neighbors, to find out    18 information on them and to try to use this in court.</p> <p>19 The majority of the victims live lives    20 trapped in pain, shame and trauma. I have spoken with    21 many who cannot come forward, will not come forward, and    22 only after a great deal of pain and fear will even    23 disclose to one or two people what's happened to them.</p> <p>24 Would you go to court? Would you see a lawyer? Would</p>	<p style="text-align: right;">Page 32</p> <p>1 limitations. We don't need to have this window. We    2 don't need to extend. We'll take care of the victims.    3 It hasn't happened in the past. It's not happening now    4 and there is no guarantee that it will happen in the    5 future. The only reason the institutions, including the    6 churches, have the child protective programs they have,    7 the vetting program -- the vetting programs for    8 employees and for clergy, the lay review boards, the    9 only reason these exist is because these institutions    10 have been forced to put them into place. Forced by    11 massive negative publicity, by the secular media and    12 especially by the courts, the lawsuits and the grand    13 juries. There was nothing effective until this    14 happened.</p> <p>15 The churches and some private institutions    16 have raised numerous irrelevant, I consider, objections    17 and gone to extraordinary lengths to convince the public    18 and to convince lawmakers that legislation to extend a    19 statute of limitations or eliminate it would threaten    20 due process, would penalize the church, bring it to its    21 financial knees, cause it to abandon its ministries.    22 This has not happened. Parishes have been closed. This    23 was true. This was in the works. It's because of    24 demographic changes, not because of massive payouts to</p>
<p style="text-align: right;">Page 31</p> <p>1 you go to the Bishop? Absolutely not. I can't. I    2 can't talk about it. I don't even want to go out in the    3 daytime one man said to me.</p> <p>4 Why are the victims of rape and sexual    5 assault penalized? Because the devastating effects of    6 the crime committed against them prohibit them, impede    7 them from coming forward for many, many years until they    8 can see some tiny bit of support and get rid of some of    9 the fear they have of going forward and going public.</p> <p>10 Why are the criminals enabled? Why are    11 they protected because of the presumption that no one    12 can get a fair trial after an arbitrarily decided upon    13 number of years? It's up to the courts to determine    14 there is no proof, that there are no witnesses. This    15 simply offers an opportunity. There have been no gross    16 devastation in California. There has been no overriding    17 miscarriage of justice in the process there.</p> <p>18 The evidence and the experience with    19 churches and other private institutions in every state    20 and in foreign countries which has been evidenced by    21 civil court processes and grand jury reports proves that    22 the welfare of children and justice for victims is    23 clearly not guaranteed by the internal processes of    24 these institutions. We don't need the statute of</p>	<p style="text-align: right;">Page 33</p> <p>1 victims. I know of no Diocese or religious order that    2 has suffered in its ministries, in its -- in the work it    3 does with people or with its parishes because of this    4 issue. It is, in short, a red herring, a big red    5 herring.</p> <p>6 The only fear that continued lawsuits bring    7 is that it will expose the secret files with more    8 revelations of clergy sexual abuse and coverup. I have    9 seen thousands of Diocesan files and personnel files and    10 what I have seen has been shocking and scandalous beyond    11 description and it has clearly fortified the suspicion    12 that churches and private institutions, and not just the    13 Catholic Church, do, indeed, favor their image, favor    14 their financial stability, favor their structures to the    15 detriment of the victims.</p> <p>16 There have been over 5,000 civil suits    17 against Catholic entities alone. There have been    18 hundreds against entities, other denominations and other    19 private institutions. Most of these end up in    20 settlement. But those that have ended up in trials with    21 the ensuing publicity clearly show a history of    22 institutions failing to provide true care, and in the    23 case of churches pastoral care, and justice for the men    24 and the women, its priests, its ministers and its rabbis</p>

9 (Pages 30 to 33)

<p style="text-align: right;">Page 34</p> <p>1 have sexually assaulted and whose lives have been 2 effectively ruined.</p> <p>3       Churches and many institutions continued to 4 blanket themselves in secrecy about known sexual 5 abusers, about reports from victims and steps taken to 6 provide a safer environment for children and the 7 vulnerable. Speaking only about my own denomination, 8 Diocese after Diocese refuses to publicly disclose the 9 names of known abusers. In a number of other situations 10 they're put back on the streets because only about 200 11 to 250 have ever been imprisoned out of the thousands 12 that have been known. They have been put back on the 13 streets and Dioceses have refused to determine or to 14 disclose where they are. Whether you're a priest, an 15 undertaker, a scuba diver, an airline pilot or a 16 legislator, if you are a compulsive sexual predator you 17 will act out until you take your last breath.</p> <p>18       I'd like to end with some questions. Why 19 do representatives and defenders of the churches and of 20 private institutions publicly state all so often how 21 horrified they are by child sexual abuse yet privately 22 campaign ceaselessly to defeat any measures, legislative 23 and otherwise which are the most effective means of 24 protecting children now and in the future? Why do</p>	<p style="text-align: right;">Page 36</p> <p>1 local parishes in Delaware, if this law passes and if 2 people are subsequently prosecuted and found to be 3 perpetrators of this type of behavior, that the local 4 parishes will in any way suffer financially because of 5 those convictions?</p> <p>6       FATHER THOMAS DOYLE: No.</p> <p>7       REPRESENTATIVE WAGNER: Thank you.</p> <p>8       SPEAKER OF THE HOUSE: Representative --</p> <p>9 I'm sorry, Representative Lavelle and then</p> <p>10 Representative Hudson in that order.</p> <p>11       REPRESENTATIVE LAVELLE: Thank you,</p> <p>12 Mr. Speaker. Hello, father, how are you today?</p> <p>13       FATHER THOMAS DOYLE: I'm well, thank you.</p> <p>14       REPRESENTATIVE LAVELLE: I am going to ask</p> <p>15 questions of a priest and a lawyer is probably two</p> <p>16 things I shouldn't do.</p> <p>17       FATHER THOMAS DOYLE: I can always tell you</p> <p>18 I don't know the answer.</p> <p>19       REPRESENTATIVE LAVELLE: That would be</p> <p>20 fine. Whatever you do don't make me look dumb. There</p> <p>21 was an article in the News Journal yesterday, you were</p> <p>22 quoted in the article, I was quoted in the article. I</p> <p>23 just wanted to read you a quote and make sure that you</p> <p>24 felt that that adequately captured either verbatim or at</p>
<p style="text-align: right;">Page 35</p> <p>1 churches preach their concern for victims, their 2 commitment to compassionate care and justice and then 3 place ultimate value and concern on their buildings, 4 their image, their influence and their power?</p> <p>5       And finally, why in a civilized, 6 enlightened society such as our own have so many church 7 and civic leaders, lawmakers and businessmen, put the 8 emotional, the spiritual and the legal welfare of the 9 most vulnerable and harmed persons in our society, the 10 victims, last?</p> <p>11       Thank you.</p> <p>12       SPEAKER OF THE HOUSE: Thank you for your 13 testimony. Any questions of the witness?</p> <p>14       Representative Wagner.</p> <p>15       REPRESENTATIVE WAGNER: Thank you very much 16 for being here. I appreciate your comment. I just want 17 to be real clear so that I understand what you were 18 saying. You can answer this with a yes or a no. Do you 19 know any incident where the local parish has had to foot 20 the bill for these programs or close services that they 21 are doing because of a lawsuit?</p> <p>22       FATHER THOMAS DOYLE: No.</p> <p>23       REPRESENTATIVE WAGNER: This can be a yes 24 or no also. Do you have any reason to believe that the</p>	<p style="text-align: right;">Page 37</p> <p>1 least certainly the essence of your comment in the 2 newspaper. It is at the end of the article. Doyle, the 3 priest and attorney, said changing the statute of 4 limitations is essential to the real change in both the 5 private and public arenas. Quote, the experience with 6 the Catholic Church has proven that this denomination 7 and other denominations, as well as other private and 8 public institutions, will only change when forced to do 9 so by a power greater than themselves and that that 10 power has been the media, public opinion and especially 11 the U.S. legal system he said, end quote.</p> <p>12       FATHER THOMAS DOYLE: I said that and I 13 stand by that and I firmly believe it. I'll repeat it 14 again because sometimes you can't hear too well. I 15 firmly believe from my experience that the only thing 16 that will make certain entities, especially churches, 17 change in this area, is a power greater than themselves 18 that is a combination of the media, the legislatures and 19 the courts. That's the only thing that has brought 20 about change thus far. All of the programs and policies 21 we know of, that's why they are there.</p> <p>22       REPRESENTATIVE LAVELLE: Thank you, Father.</p> <p>23       And, again, back to your quote. And other 24 denominations, as well as private and public</p>

10 (Pages 34 to 37)

<p style="text-align: right;">Page 38</p> <p>1 institutions. Public institutions. State of Delaware, 2 State of California, the 50 states that this country is 3 so fortunate to be made up of, public institutions, do 4 you think public institutions -- first of all, do you 5 think public institutions, not necessarily 6 intentionally, employ pedophiles?</p> <p>7 FATHER THOMAS DOYLE: I'm sorry?</p> <p>8 REPRESENTATIVE LAVELLE: Do public 9 institutions not intentionally obviously, but do 10 pedophiles work for public institutions?</p> <p>11 FATHER THOMAS DOYLE: I'm sure they do.</p> <p>12 REPRESENTATIVE LAVELLE: Thank you. So to 13 change behavior we need laws to change behavior. You 14 have said that. We need to force behavior. I am 15 offended, sir, I am offended at the behavior of the 16 Catholic Church in this issue. I am a Catholic. I am 17 offended by what they have done and what they have 18 failed to do. I'm also a State lawmaker. I am charged 19 by making sure that the State of Delaware does what it 20 needs to do through laws. We do it every day. Tell the 21 public what to do. We often tell the State of Delaware 22 what to do. So I appreciate your comment and 23 confirmation that this is not a misquote, that public 24 institutions will change only when forced to change to a</p>	<p style="text-align: right;">Page 40</p> <p>1 children deserve more protection under the law than the 2 other one?</p> <p>3 FATHER THOMAS DOYLE: No argument, I mean 4 I'm not arguing with you.</p> <p>5 REPRESENTATIVE LAVELLE: No. No, as 6 Representative Wagner said, a simple yes or no.</p> <p>7 FATHER THOMAS DOYLE: No.</p> <p>8 REPRESENTATIVE LAVELLE: Does one of these 9 children deserve more protection under the law than the 10 other one?</p> <p>11 FATHER THOMAS DOYLE: Not unless one of 12 them has special needs or something like that.</p> <p>13 REPRESENTATIVE LAVELLE: Well, as a matter 14 of fact one of them does.</p> <p>15 FATHER THOMAS DOYLE: Okay. He probably 16 does.</p> <p>17 REPRESENTATIVE LAVELLE: But the answer is 18 these children and these children are representative of 19 children across the State, do not in your opinion, sir, 20 in your learned opinion, you're an attorney, you're a 21 priest, you have spent tremendous amount of time, good 22 effort, forcing change with churches and private 23 institutions, but your opinion is that neither of these 24 children deserve lesser protection under the law?</p>
<p style="text-align: right;">Page 39</p> <p>1 system, a power I believe you used, sir, greater than 2 what they are and that is the force of law and public 3 opinion.</p> <p>4 You may not be familiar, sir, that in the 5 last year, and I know my colleagues are familiar, there 6 has been four arrests of public school employees for the 7 rape or sexual abuse of children in the last year. 8 Would that concern you?</p> <p>9 FATHER THOMAS DOYLE: It would certain 10 concern me. What concerns me more, though, is the fact 11 that the private institutions, especially the churches, 12 have more of a propensity and a track record of moving 13 known abusers around from place to place under the cloak 14 of secrecy. If you rape a kid when you're a fourth 15 grade teacher chances of you being promoted to seventh 16 grade are kind of nil.</p> <p>17 REPRESENTATIVE LAVELLE: I have anecdotal 18 comments. I think we hear the pass the trash comments, 19 and I agree with you that they shouldn't be passing 20 anyone in the public or private institution. I would 21 suggest to you from calls that I have got on some of 22 these cases that there is a concern that perhaps the 23 State failed or didn't do what it should have done. I 24 have a picture of two children here. Does one of these</p>	<p style="text-align: right;">Page 41</p> <p>1 FATHER THOMAS DOYLE: No.</p> <p>2 REPRESENTATIVE LAVELLE: Thank you, sir. I 3 appreciate you coming today and I hope that we can 4 change the church and have positive impact on all the 5 citizens of the State of Delaware. Thank you for taking 6 the time to come. I appreciate it.</p> <p>7 SPEAKER OF THE HOUSE: I have 8 Representative Hudson, Representative Valihura and then 9 Representative Wagner in that order.</p> <p>10 REPRESENTATIVE HUDSON: Yes. I was just 11 going to thank the speaker and to say that since I 12 questioned the last speaker of why he was here I would 13 like to say that I invited this man here today and he 14 paid his own expenses to be here and he has a seven 15 o'clock appointment in Virginia but he doesn't care --</p> <p>16 FATHER THOMAS DOYLE: The seven o'clock 17 appointment is dead. I find this is much more important 18 for being here.</p> <p>19 SPEAKER OF THE HOUSE: Thank you for being 20 here with us. Now I have Representative Valihura and 21 Representative Wagner, sounds like the gentleman --</p> <p>22 FATHER THOMAS DOYLE: Am I done?</p> <p>23 SPEAKER OF THE HOUSE: No. You're still 24 with us for just a few more minutes but I'll get you out</p>

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1 of here as quick as we can. Representative Valihura.  
 2 REPRESENTATIVE VALIHURA: Just a comment,  
 3 Mr. Speaker. We had a sexual predator in my district or  
 4 just outside my district in Claymont and there is  
 5 anecdote -- better than anecdotal evidence that the  
 6 schools moved that individual around and those were  
 7 public schools.  
 8 SPEAKER OF THE HOUSE: Thank you, sir.  
 9 Representative Wagner.

10 REPRESENTATIVE WAGNER: Thank you. Yes, I,  
 11 too, have a question about something I read in the paper  
 12 yesterday and because I have no way of knowing if it's  
 13 correct you might can help me out. This month the  
 14 Catholic -- it's from the News Journal, this month the  
 15 Catholic Diocese of Wilmington backed away from its  
 16 previous opposition to eliminating the statute of  
 17 limitations. A statement in the June 7th edition of the  
 18 Diocese newspaper, The Dialogues, says Diocesan  
 19 officials want SB 29 amended to remove sovereign  
 20 immunity coverage for state institutions. Do you know  
 21 if that's correct?  
 22 FATHER THOMAS DOYLE: That I can't speak to  
 23 that. I don't know. My only fear would be that a good  
 24 Bill as you have get bogged down as has happened in

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1 other -- in other states where the church will come in  
 2 and start doing a lot of weaving and bobbing and weaving  
 3 and end up with amendments to the Bills and all of a  
 4 sudden the main point is gone. The point here is the  
 5 protection of children which is more important in my  
 6 humble opinion than buildings, than money, than parish  
 7 plants and so on and so forth. These are programs for  
 8 the future. You know, these are things that are  
 9 protecting real, live human beings, the most, you know,  
 10 devastated in our midst.

11 REPRESENTATIVE WAGNER: Thank you.  
 12 SPEAKER OF THE HOUSE: Representative  
 13 Lavelle.  
 14 REPRESENTATIVE LAVELLE: Mr. Speaker, very  
 15 brief. Thank you again, sir. California, you spoke to  
 16 California, California in this issue of sovereign and  
 17 limited immunity which we'll get into later, I'm sure  
 18 you're familiar with the concept, do you know did  
 19 California waive the immunity?

20 FATHER THOMAS DOYLE: That I can't speak to  
 21 that. That I don't know.  
 22 SPEAKER OF THE HOUSE: Thank you. Any  
 23 other questions for the witness? Thank you and thank  
 24 you for being with us.

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1 FATHER THOMAS DOYLE: Thank you and thank  
 2 you.  
 3 SPEAKER OF THE HOUSE: Representative  
 4 Hudson.  
 5 REPRESENTATIVE HUDSON: Yes.  
 6 Representative Stone has a witness.  
 7 SPEAKER OF THE HOUSE: Representative  
 8 Stone.  
 9 REPRESENTATIVE STONE: Thank you,  
 10 Mr. Speaker. Mr. Speaker, I'd like to ask for personal  
 11 privilege of the floor for Mr. Larry Zutz who represents  
 12 the Zutz Insurance group who is here to speak with the  
 13 House about the issue regarding insurance regarding  
 14 these types of claims.  
 15 SPEAKER OF THE HOUSE: Thank you,  
 16 Representative. It's an honor to have you with us  
 17 today. Once again if you'd give your name and company  
 18 for the record.  
 19 MR. LARRY ZUTZ: Thank you, Mr. Speaker. I  
 20 am showing you my best side and to distinguished members  
 21 of the House. My name is Larry Zutz and I'm president  
 22 of the Zutz --  
 23 REPRESENTATIVE VALIHURA: Speak directly --  
 24 MR. LARRY ZUTZ: You can't hear me?

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1 I'll -- is that better?  
 2 SPEAKER OF THE HOUSE: Yes.  
 3 MR. LARRY ZUTZ: Better? Okay. I'll try.  
 4 Not a powerful voice.  
 5 SPEAKER OF THE HOUSE: It's okay.  
 6 MR. LARRY ZUTZ: But I'm here not to  
 7 promote or to argue against the specifics of this  
 8 legislation. I'm really here to answer questions which  
 9 I have done on previous occasions. I'll make an  
 10 anecdotal comment at the front end and really turn it  
 11 over to you because my purpose here is limited to deal  
 12 with the potential impacts of what -- whatever  
 13 legislation you pass as it reflects on the insurance  
 14 industry and the underwriting fraternity.  
 15 Jargonistically speaking, this coverage is called SAM  
 16 coverage, sexual abuse and molestation. It didn't used  
 17 to exist until a dozen, 15, 20 years ago. The industry  
 18 is infamous for identifying new exposures and creating  
 19 new coverages to relate to those exposures.  
 20 I guess in terms of simple background what  
 21 you should know is that sexual abuse and molestation  
 22 coverage has become a restricted market over the last  
 23 dozen years because of the frequency of claims,  
 24 certainly in certain directions, and the costs of the

12 (Pages 42 to 45)

1 insurance has risen dramatically. The other thing in  
 2 terms of general background, where I wouldn't expect  
 3 most of you to be knowledgeable about this, there are  
 4 two different forms of coverage by which this type of  
 5 insurance is underwritten. One is called claims made  
 6 and the other is called occurrence coverage. Claims  
 7 made insurance is a fairly, relatively speaking, newer  
 8 form of coverage in the insurance industry. It is  
 9 tracking when the claim is made. By and large, other  
 10 than prior acts protection features, which I'm sure will  
 11 come out in questions, claims made insurance is  
 12 responsive to when the claim is made, not when the  
 13 alleged offensive conduct took place.

14 Occurrence coverage is historically the  
 15 standard by which general liability coverages have been  
 16 underwritten in the industry and that looks to when the  
 17 offensive conduct took place. Interestingly, both forms  
 18 of insurance coverage are offered on a limited basis  
 19 with regard to sexual abuse and molestation coverage.

20 I really want to turn this over to you  
 21 folks to deal with the questions you have about what if  
 22 legislation is passed in one context or another. If you  
 23 don't have questions, then I promise you I will launch  
 24 into an historical perspective to that might be

1 enlightening about other types of situations that could  
 2 be seen as comparable but I think this would be better  
 3 done if you ask the questions and I'll try my best to  
 4 answer. So with that I think I'm --

5 SPEAKER OF THE HOUSE: Larry, did you give  
 6 your name and company for the record?

7 MR. LARRY ZUTZ: I thought I did. Well,  
 8 maybe you couldn't hear. Larry Zutz. I'm president of  
 9 Zutz Insurance which is part of Hilb, Rogal & Hobbs for  
 10 the last 15 months. Zutz Insurance has been around for  
 11 67 years in Wilmington, Delaware.

12 SPEAKER OF THE HOUSE: Thank you, sir.  
 13 Representative Stone.

14 REPRESENTATIVE STONE: Thank you,  
 15 Mr. Speaker. Open dialogue with the witness, please?

16 SPEAKER OF THE HOUSE: Yes.

17 REPRESENTATIVE STONE: Mr. Zutz, thank you  
 18 for being here today. As the Chair of the Insurance  
 19 Committee I was very honored to introduce you and I know  
 20 that you are considered absolutely an expert on this  
 21 type of insurance. You started out by telling us that  
 22 it's called sexual abuse and molestation insurance and  
 23 you referred to it as SAM, I guess acronyms are used  
 24 today for everything. So certainly it doesn't surprise

1 me that this one has one as well.

2 Would you share with me what the impact has  
 3 been on the availability and premiums of this type of  
 4 insurance in Delaware, obviously because there have been  
 5 lawsuits filed here, as well as in perhaps some of the  
 6 other jurisdictions where lawsuits are prevalent?

7 MR. LARRY ZUTZ: I'll try my best. As I  
 8 mentioned earlier it's a newer form of coverage. The  
 9 industry alleges that it didn't under SAM that it  
 10 harbored this exposure historically, probably doesn't go  
 11 back much more than 20 years ago. The early iterations  
 12 were done on an occurrence basis and I mentioned they  
 13 are still underwritten by several companies, several of  
 14 the leading companies that underwrite Delaware not for  
 15 profits and other businesses. The impact in terms of  
 16 greater frequency of claims, as well as some large shock  
 17 numbers, catastrophic loss potentials, has greatly  
 18 restricted the availability of this coverage nationwide.

19 Delaware will never make a market when it  
 20 comes to almost anything as subject matter in the  
 21 insurance world. We're simply too small. We don't have  
 22 credibility in our numbers. Delaware is seen as a more  
 23 favorable judicial environment. I speak in part as a  
 24 Delaware lawyer in this regard and I'm biased on behalf

1 of our Delaware judicial system, but we are better  
 2 certainly than states that are around us and nationwide  
 3 as many of you have heard in different contexts. The  
 4 National Chamber of Commerce basically rates Delaware as  
 5 top in all ten categories that it evaluates.

6 Having said that, reinsurance is the tail  
 7 that wags the dog in this. This is not rocket science.  
 8 It is licensed gambling. That is what insurance is. It  
 9 is to offer the abstraction of a promise to pay on  
 10 behalf of the insured based on certain contingencies.  
 11 Because there have been more and more not less and less  
 12 of these suits there is a draining marketplace, and  
 13 there isn't anything out there in the immediate future,  
 14 whether this legislation is passed or not, that says  
 15 that this will be a more widely available type of  
 16 insurance. So we'll be impacted as much as what goes on  
 17 around us as much as what happens here.

18 REPRESENTATIVE STONE: Thank you. We have  
 19 heard a lot of comments already today about both the  
 20 church and the public sector in regards to the impacts  
 21 of this legislation. I want to focus for a moment if I  
 22 could on nonprofits, on organizations like the Boys and  
 23 Girls Club, on organizations like the Little League.  
 24 Can a Delaware nonprofit organization purchase SAM

<p style="text-align: center;">Page 50</p> <p>1 coverage to cover a past act? In other words, can they    2 buy coverage retroactively for something that may be, as    3 I describe it in this Bill, infinity?</p> <p>4 MR. LARRY ZUTZ: That's a really good    5 question and it doesn't admit to an easy answer. First    6 of all, most Delaware not for profits, not that we    7 handle most of those, have been insured on a continuing    8 basis in the State of Delaware. Interestingly, and this    9 was actually surprising me to me where I have canvassed    10 the lead underwriters in the last several weeks knowing    11 that I was being asked to show up here, the fact is I    12 was surprised that most of the Delaware not for profits    13 have been insured on an occurrence basis. What that    14 means is that they have prior acts as it relates to the    15 insurances that they have previously purchased. And so    16 if a Boys and Girls Club has been buying insurance on an    17 occurrence basis for 15 years, they have for each one of    18 those policy periods - it's like a gold certificate you    19 don't want to throw those insuring agreements away -    20 they have coverage for their prior acts. As you deal    21 with claims that come in you track back to when the    22 offensive conduct took place. Assuming that the    23 insurance company is still around, viable, solvent,    24 there would be coverage on a continuing basis.</p>	<p style="text-align: center;">Page 52</p> <p>1 when the coverages were purchased and so if that gets    2 retrospectively removed, it in a sense pulls the rug out    3 from under underwriters who have previously written    4 those coverages.</p> <p>5 However, this really becomes a wait to see    6 attitude, and in discussions that I have had with    7 underwriters nobody said to me that if this legislation    8 - and I was real careful to point out retrospective look    9 in this that looks backward for a two-year period with    10 the standard being gross negligence - most of you know    11 this even better than I do - looking forward it's new    12 negligence, we're talking about respondeat superior    13 conduct in this and the vicarious liability that the    14 organizations have, no one said they would instantly    15 pull out. They all expressed a concern that would be    16 wait to see what would happen with regard to claims.</p> <p>17 And so you can draw upon whatever are the    18 other experiences in other jurisdictions. I think that    19 this legislation, as I understand it, is more refined    20 than in some other places but I'm not here to offer    21 myself as an expert as to what happened in California,    22 what happened in the State of Washington. It would be    23 wait to see what happens in terms of claims. I hope    24 that that responds.</p>
<p style="text-align: center;">Page 51</p> <p>1 If your question is not for profits or    2 other entities that have not purchased coverage, the    3 overpowering likelihood is that it would only be offered    4 to them on a claims-made basis with what's called    5 jargonistically speaking retro date inceptions, which    6 means there would be no prior acts protection under    7 those circumstances.</p> <p>8 REPRESENTATIVE STONE: This expansion of    9 the statute of limitations for claims of abuse, would    10 you share with me what your thoughts are on what that    11 will do to insurance premiums on organizations like the    12 Boys and Girls Club, like a Little League, like the    13 YMCA?</p> <p>14 MR. LARRY ZUTZ: Again, this is not rocket    15 science. We're talking licensed gambling and insurance    16 companies take risk for value. In an environment where    17 there is the perception of greater risk, several things    18 always happen: Availability shrinks and the cost of    19 coverage goes up. And so in terms of statutes of    20 limitation, keeping in mind that most of the Delaware    21 not for profits, as I understand it, have been insured    22 on an occurrence basis, and the at least subliminal    23 underwriting fabric, the judgements that are part of    24 that are that there were statutes of limitation in place</p>	<p style="text-align: center;">Page 53</p> <p>1 REPRESENTATIVE STONE: Thank you. Thank    2 you very much.</p> <p>3 SPEAKER OF THE HOUSE: Representative    4 Manolakos. Mr. Terry Manolakos.</p> <p>5 REPRESENTATIVE MANOLAKOS: Open dialogue    6 with the witness?</p> <p>7 SPEAKER OF THE HOUSE: Yes, sir.</p> <p>8 REPRESENTATIVE MANOLAKOS: Mr. Zutz, the    9 previous witness testified that there were a lot of    10 concerns about cost to the institutions and my question    11 is fairly simple to you. When institutions purchase the    12 SAM insurance what level of liability or what percentage    13 is the institution responsible for in the case of an    14 award against them generally speaking?</p> <p>15 MR. LARRY ZUTZ: Well, if we're having an    16 insurance discussion here policy limits govern and if    17 you deal with a judicial pronouncement that exceeds the    18 limits of the policy, the organization is on the hook    19 for its own shortfall in that. Right now you're going    20 to find million dollar limits being about the maximum    21 that can be purchased, maybe two in some specified    22 circumstances, and church-related organizations which    23 three, four, five years ago could still get up to ten    24 million of coverage are down to two.</p>

14 (Pages 50 to 53)

<p style="text-align: center;">Page 54</p> <p>1 REPRESENTATIVE MANOLAKOS: Thank you.</p> <p>2 MR. LARRY ZUTZ: You're welcome. There</p> <p>3 have to be more insurance-related questions.</p> <p>4 SPEAKER OF THE HOUSE: Representative</p> <p>5 Valihura.</p> <p>6 REPRESENTATIVE VALIHURA: Thank you,</p> <p>7 Mr. Speaker. Open dialogue?</p> <p>8 SPEAKER OF THE HOUSE: Yes, sir.</p> <p>9 REPRESENTATIVE VALIHURA: Thank you. Do</p> <p>10 you have a most pressing concern about this legislation</p> <p>11 with respect to the insurance industry?</p> <p>12 MR. LARRY ZUTZ: The uncertainty that it</p> <p>13 imposes. I guess in terms of simplistic analysis by</p> <p>14 lifting statutes of limitation claims that have been</p> <p>15 previously time barred no longer will be. And so it is</p> <p>16 obviously more likely that claims that wouldn't be</p> <p>17 brought because they simply couldn't be brought might be</p> <p>18 brought. My standing here and saying if California had</p> <p>19 a thousand cases that Delaware is going to have 50, I</p> <p>20 don't have a clue under those circumstances. I mean, as</p> <p>21 you have heard more eloquently than I could offer,</p> <p>22 statutes of limitation are part of our common law</p> <p>23 antecedents. They do work injustices, unfairnesses, if</p> <p>24 you will, but these principles have reposed and been on</p>	<p style="text-align: center;">Page 56</p> <p>1 happens as a result of changing that fabric.</p> <p>2 REPRESENTATIVE VALIHURA: Do you have any</p> <p>3 experience with other legislative changes that might</p> <p>4 have some bearing on this particular situation on what</p> <p>5 might be expected here?</p> <p>6 MR. LARRY ZUTZ: I think we all do in</p> <p>7 certain contexts. Probably the best analogy involves</p> <p>8 pollution liability coverages. The insurance industry</p> <p>9 didn't underwrite for the exposures, whether it was</p> <p>10 seepage in the ground or black lung disease. And there</p> <p>11 was a whole series of cases that really began in the</p> <p>12 60s, the 70s and the 80s, the insurance industry said we</p> <p>13 didn't underwrite for this, we never collected premium</p> <p>14 for it, we're not responsible for it. The industry lost</p> <p>15 repeatedly because in contracts of adhesion, which</p> <p>16 insurance contracts typically are, it's included unless</p> <p>17 it's excluded, and so, finally, the industry got to the</p> <p>18 point where it said it's excluded, things calmed down.</p> <p>19 But the fact is there were thousands of underwriters for</p> <p>20 comprehensive general liability coverages back in the</p> <p>21 middle of the previous century leading up to the new</p> <p>22 century. When it came to pollution liability coverages,</p> <p>23 as a result of the expanded concept of liability on the</p> <p>24 part of insurers the market basically disappeared, and,</p>
<p style="text-align: center;">Page 55</p> <p>1 the books for hundreds of years even before there was a</p> <p>2 United States of America. And so the lawyer in me is</p> <p>3 nervous about the uncertainty principle. That's as</p> <p>4 much, I think, Representative Valihura, as I can say.</p> <p>5 REPRESENTATIVE VALIHURA: I neglected to</p> <p>6 say up front, as I do every time you're before us is</p> <p>7 that I am a client of yours and I do get my insurance</p> <p>8 from you and so but I do want to make that disclosure up</p> <p>9 front. But would it surprise you to learn that tomorrow</p> <p>10 in the Judiciary Committee we have another Bill to do</p> <p>11 away with a statute of limitations.</p> <p>12 MR. LARRY ZUTZ: Would it surprise me?</p> <p>13 REPRESENTATIVE VALIHURA: Yes.</p> <p>14 MR. LARRY ZUTZ: Yes, because as I</p> <p>15 recollect, our society, Delaware, the nations, doesn't</p> <p>16 fool with statutes of limitations all that often.</p> <p>17 REPRESENTATIVE VALIHURA: And if we started</p> <p>18 to get a reputation of fooling around with our statute</p> <p>19 of limitations here in the State what might that do to</p> <p>20 the insurance business in the state? And not looking at</p> <p>21 it from the insurance business perspective but from the</p> <p>22 buyer of (inaudible to reporter) insurance.</p> <p>23 MR. LARRY ZUTZ: It's unsettling. It's not</p> <p>24 necessarily a disaster because it's a function of what</p>	<p style="text-align: center;">Page 57</p> <p>1 truly, there have only been a few that have crawled</p> <p>2 back, AIG is one, people that really understand how to</p> <p>3 take risks for big bucks and can handle the big hits in</p> <p>4 terms of exposures.</p> <p>5 We have got -- we have got comparable</p> <p>6 situations as it relates to flood coverage. All the</p> <p>7 legislation that actually ended up creating floodplains</p> <p>8 that the industry uses it's all been changed because of</p> <p>9 development in runoff patterns. You can't force a risk</p> <p>10 taker to take risks if the feeling is that they're going</p> <p>11 to get murdered by doing it. And so what really</p> <p>12 happened was there are no flood coverages except they</p> <p>13 are underwritten by the federal government. It's paper</p> <p>14 that's issued by insurance companies but the exposures</p> <p>15 are underwritten by the federal government. TRIA,</p> <p>16 Terrorism Risk Insurance Act, World Trade Center goes</p> <p>17 down, the insurance industry says we're not going to</p> <p>18 stand for this. And so at the federal level it expired,</p> <p>19 it's been extended, it's being analyzed and may be</p> <p>20 extended again. The exposures are largely being</p> <p>21 underwritten by the federal government.</p> <p>22 And so you deal with the background here</p> <p>23 where you can't -- you can't lead this horse to water</p> <p>24 and make him drink. And so if we fail greatly with the</p>

15 (Pages 54 to 57)

1 responsibilities that arguably might not have existed  
 2 earlier it makes us a less appealing place to take  
 3 risks. And so far we're handling it pretty well as a  
 4 state, and as I said early on in today's comments, I'm  
 5 not dealing with anybody that said in articulating the  
 6 features of this legislation that they'll pull out of  
 7 Delaware tomorrow. You should expect increased costs.  
 8 There is another feature to this, it's called CEOL,  
 9 combined expenses/outside limits, and a lot of these  
 10 coverages offer the expenses related to litigation  
 11 outside policy limits. Almost everyone that I talked to  
 12 said those expenses will now become part of limits. So  
 13 that's reduced coverage under the circumstances, and  
 14 even with it you should expect higher deductibles that  
 15 will be imposed.

16 SPEAKER OF THE HOUSE: Representative  
 17 Viola, questions of the witness?

18 REPRESENTATIVE VIOLA: Just in reference, I  
 19 mean we're debating SB 29, but yet there was just a case  
 20 very recently settled or awarded I guess here in the  
 21 State for I believe something along the line of 40  
 22 million dollars or somewhere in that neighborhood, and  
 23 that proceeded and I guess in a sense was successful  
 24 without this legislation. Not that this isn't needed.

1 My point being I guess you're saying or indicating that  
 2 this piece of legislation is going to open up a door for  
 3 higher costs for insurance. You have a case that just  
 4 got settled for 41 million.

5 MR. LARRY ZUTZ: I don't believe it was  
 6 settled for 41 million. There is some curiosities in  
 7 that case and the educational institution and the  
 8 Diocese of Wilmington were not parties in the ultimate  
 9 net outcome and no money has passed hands. And it was a  
 10 Pennsylvania priest who is implicated in this and that  
 11 was a suit, as I understand it, that was against a  
 12 priest who never really made an appearance.

13 Believe me, underwriters are aware of this  
 14 but that doesn't have the same impact as changing the  
 15 statute of limitations. It's part of the environment  
 16 and it's already an early statement that you better  
 17 watch out because things are changing.

18 SPEAKER OF THE HOUSE: Any other questions  
 19 of the witness? You may be excused, sir. I don't  
 20 believe there is any other questions at this time.  
 21 Representative Hudson, any other witnesses?

22 REPRESENTATIVE HUDSON: Thank you.  
 23 Mr. Zutz is a constituent of mine. I'm happy to see him  
 24 here. I guess on a lighter note there could be more

1 insurance sold in this state, but the next witness is  
 2 also Representative Stone's.

3 SPEAKER OF THE HOUSE: Representative  
 4 Stone.

5 REPRESENTATIVE STONE: Thank you,  
 6 Mr. Speaker. I would like to introduce to the chamber  
 7 Mr. George Krupanski who is with the Delaware Boys and  
 8 Girls Club here in Delaware.

9 SPEAKER OF THE HOUSE: Thank you. Welcome  
 10 to the chamber, sir.

11 REPRESENTATIVE STONE: We're supposed to  
 12 disclose everything of course, so I'd just like to share  
 13 with my colleagues that I serve on the board of  
 14 directors of the Greater Dover Boys and Girls Club and I  
 15 have a long-standing friendship and working relationship  
 16 with Mr. Krupanski. Welcome. It's nice to have you  
 17 here.

18 MR. GEORGE KRUPANSKI: Thank you.

19 SPEAKER OF THE HOUSE: Once again, if  
 20 you'll give your name and organization for the record.

21 MR. GEORGE KRUPANSKI: Sure. My name is  
 22 George Krupanski. I am the president and CEO of the  
 23 Boys and Girls Club of Delaware, representing tens of  
 24 thousands of Delaware's youth across the state.

1 Mr. Speaker and members of the House, at the outset let  
 2 me say that we support the goal of Senate Bill 29. As  
 3 someone who has dedicated his life towards dedicating  
 4 opportunities for our youth, inspiring their dreams and  
 5 steering them from a life of crime and drugs to a life  
 6 of a productive, successful member of our community, I  
 7 am repulsed by the notion of any adult sexually abusing  
 8 a minor, absolutely repulsed, and believe those  
 9 offenders should be held accountable.

10 My concern is simple, my testimony short.  
 11 My concern focuses mostly on the agency. We urge you to  
 12 consider that the legislation would have a significant  
 13 impact on nonprofits in our State. We simply have not  
 14 and were never required to keep records of our coaches,  
 15 volunteers, dating back 30, 40 years ago. If someone  
 16 came forward tomorrow claiming they were sexually abused  
 17 by a coach 30 years ago I'd have no way of knowing, no  
 18 way of digging out such records, probably no insurance  
 19 coverage because I now learned through Mr. Zutz's  
 20 testimony that the gold certificate you need to hang on  
 21 to we don't have those going back 15 years ago. I have  
 22 no way of disproving gross negligence.

23 We would want to take such a charge very  
 24 seriously and we would address that matter

1 appropriately. We just simply would not know where to  
 2 begin. I do believe that amendments offered to this  
 3 Bill should have some limitation on retroactivity as it  
 4 relates to the agency and require actual knowledge on  
 5 the part of the nonprofit.

6 I urge you to consider such amendments. I  
 7 am not a lawyer but I am on the front lines of trying to  
 8 keep our youth out of trouble and into mentoring  
 9 relationships with counselors and coaches who are good  
 10 people that would never cross that line. I welcome the  
 11 opportunity to work with you and make this legislation  
 12 to work as intended to truly help kids who have been  
 13 victimized by the adults they trusted. Thank you.

14 SPEAKER OF THE HOUSE: Thank you for your  
 15 testimony, sir. Representative Hudson.

16 REPRESENTATIVE HUDSON: Thank you, sir.  
 17 The last witness that we have today is a professor,  
 18 Marci Hamilton. She came here also at her own expense  
 19 from Pennsylvania. She had clerked for Associate  
 20 Justice Sandra Day O'Connor. She has a JD from the  
 21 University of Pennsylvania, and she just wrote a book  
 22 "How to Deliver Us From Evil, What the Clergy Abuse  
 23 Crisis Has Taught Us". May she come up for testimony?

24 SPEAKER OF THE HOUSE: Yes. Welcome to our

1 number of years now and I think it has become crystal  
 2 clear to me that it is absolutely necessary to abolish  
 3 the statute of limitations on childhood sexual abuse and  
 4 to create windows because our child abuse victims are  
 5 not capable of coming forward in the ridiculous time  
 6 limits that we have given them. It's not just Delaware.  
 7 It's all over the country. Only Maine and Alaska have  
 8 abolished those statute of limitations at this point.  
 9 Only California has enacted a window. So Delaware is on  
 10 the forefront of what is in effect a revolution for  
 11 children.

12 Let me just make a few quick responses to  
 13 some of the things that you have heard today. I think  
 14 it's unfortunate when facts do not make it into  
 15 testimony and you have been led astray in a number of  
 16 ways.

17 I have been the constitutional litigator  
 18 for clergy abuse victims across the country in  
 19 California, Wisconsin, New Hampshire. I have been the  
 20 Constitutional First Amendment advisor in the Spokane,  
 21 the Portland and now the San Diego Archdiocese  
 22 bankruptcies. I have seen how these cases happen on the  
 23 ground. I have seen the financials. I have seen the  
 24 impact, and I can tell you with all truthfulness that no

1 chamber and if you would give your name also for the  
 2 record.

3 MS. MARCI HAMILTON: It's Marci Hamilton,  
 4 Mr. Speaker, thank you very much. Thanks very much for  
 5 this opportunity to talk about this extraordinarily  
 6 important Bill. This is a part of a movement in the  
 7 United States which is part and parcel of the movement  
 8 for civil rights for children. Children have not in the  
 9 United States been given the kind of protections that we  
 10 need and we learned about what we have been doing wrong  
 11 from the publicity surrounding the Catholic Church's  
 12 problems. But the Catholic Church's problems were just  
 13 an opportunity to learn. What we learned is that we  
 14 have been doing it wrong.

15 Our children have been abused. Only ten  
 16 percent of victims ever come forward. There is a lot of  
 17 suffering out there. And the reason they don't come  
 18 forward is because the laws that we passed have favored  
 19 perpetrators and predators over children. What you're  
 20 being asked to do today is a very simple policy choice.  
 21 There is only two sides to the equation. The one side  
 22 are the perpetrators and the predators and the other  
 23 side are the children.

24 I have been working on this issue for a

1 services have been cut in the United States as a result  
 2 of a victim. It's just a fact. When you are told that,  
 3 it's worthwhile asking where did you get your data  
 4 because that data isn't out there. There has been no  
 5 closure of services, in part because our states and our  
 6 federal government actually pay 86 to 87 percent into  
 7 Catholic charities funds. Almost all of the money that  
 8 goes into Catholic charities comes from the public fist.  
 9 So that the notion that you're even dealing with a Bill  
 10 that is going to cut services is ridiculous.

11 But let me back up and say again, we  
 12 learned about the problem from the church, but with all  
 13 due respect to the church it's irrelevant. What we're  
 14 dealing with here, the vast majority of these victims  
 15 are incest victims.

16 I get e-mails all the time from all over  
 17 the country of people coming forward to tell their  
 18 stories of child abuse, ages 40, 50, 60, 70. A woman  
 19 e-mailed me about two months ago or three months ago at  
 20 this point to tell me that she was an incest victim  
 21 living in Florida and she had been abused in New York.  
 22 She called her father when she turned 42 and said to her  
 23 father, you sexually abused me my entire childhood and I  
 24 am going to get justice. I want to meet with you and I

1 want to tell you what you did to me and I want to bring  
 2 a lawsuit because of what you have done to my life. You  
 3 have ruined my life because you insisted on raping me on  
 4 a regular basis. The father's answer was, well, dear,  
 5 it's too late. The statute of limitations ran years  
 6 ago. Don't kid yourselves, the predators know the  
 7 statute of limitations. They count on it. They expect  
 8 it. They know what to rely on in the legal system and  
 9 there is no better protection for them than the statute  
 10 of limitations.

11 The only way that we will ever learn the  
 12 identities of the vast majority of the predators that  
 13 live in our neighborhoods and teach our children and  
 14 sell ice cream to our children, the only way we'll ever  
 15 learn those identities is through a civil window because  
 16 the criminal statute of limitations ran long ago and you  
 17 can't open it up. The criminal statute of limitations  
 18 constitutionally is incapable of being opened and so the  
 19 only option is opening the civil statute of limitations  
 20 backwards to find out that 90 percent of those instances  
 21 that we never have heard about yet and going forward and  
 22 giving the victims as long as possible.

23 With respect to insurance, I always find it  
 24 interesting that that issue is raised because in

1 California there has been a window in effect since 2003.  
 2 To my knowledge no insurance industry has gone out of  
 3 business even though insurance companies have, in fact,  
 4 paid in the settlements. Maine and Alaska, as I  
 5 mentioned, have abolished the statute of limitations in  
 6 childhood sexual abuse. I have heard absolutely no  
 7 evidence that the insurance industry has gone out of  
 8 business in those two states.

9 The real question for this chamber is what  
 10 is best for children and there really isn't much of an  
 11 option out there. In order to fix the law the only  
 12 thing that can be done is to let them take their time  
 13 until they're capable of coming forward. So many of  
 14 these victims take 40, 50, 60 years. They don't get the  
 15 time, we don't find out who the perpetrators are. And  
 16 if we don't find out who the perpetrators are, we don't  
 17 find out who the other victims are either.

18 The beauty of the window - and I'll close  
 19 with this - the beauty of the window in California was  
 20 that when a victim would come forward about a particular  
 21 perpetrator and that perpetrator's name would be in the  
 22 newspaper, other victims would come forward and say oh,  
 23 my God, I thought I was the only one. And they found  
 24 out that they were not the only crime victims, that

1 there were others out there, and we learned about the  
 2 suffering of these victims in a way that we never would  
 3 have learned otherwise. So I stand before you as  
 4 someone who believes passionately in the justice of a  
 5 window and also in the abolition of the statute of  
 6 limitations.

7 SPEAKER OF THE HOUSE: Any questions or  
 8 comments for the witness? Representative Lavelle.

9 REPRESENTATIVE LAVELLE: Thank you,  
 10 Mr. Speaker. Welcome. Again, I'm really stretching my  
 11 luck today going against a constitutional scholar and a  
 12 lawyer and a priest but it's my 15th wedding anniversary  
 13 so --

14 MS. MARCI HAMILTON: Congratulations.

15 REPRESENTATIVE LAVELLE: Thank you and take  
 16 sympathy on me. I appreciate you coming. I appreciate  
 17 you pointing out the fact that I think we have become  
 18 aware of that 85 percent, I think is the number you  
 19 used, that these cases are cases of incest. There is  
 20 cases of priest abuse that are clearly documented.  
 21 There is cases of teacher abuse. I suspect that all you  
 22 have gone through, public employees, we're not going to  
 23 pick on the teachers in question, that have been  
 24 documented as well. I stand in support of all these

1 victims. I stand in support of all these victims past,  
 2 present and future and I'm sure you do as well, right?

3 MS. MARCI HAMILTON: I stand in favor of  
 4 helping all of the victims. I am on public record of  
 5 being in favor of abolishing the statute of limitations  
 6 in all circumstances. But I am also on the record as  
 7 understanding that there is a wide difference under our  
 8 constitutional system between the public and the private  
 9 sphere. And with respect to those two spheres right now  
 10 we're very well educated, sadly, on what's going on in  
 11 the private sphere. We have a number of cases across  
 12 the country involving the private sphere. We are very  
 13 well aware of what needs to be done.

14 With respect to the public sphere, I have  
 15 no doubt, actually, that that is the future challenge,  
 16 but we do not have the data yet. We have just the  
 17 beginnings of some of the data and it is my view that  
 18 there is no question that the Bill as written is worthy  
 19 of passage for public policy reasons for children. With  
 20 respect to what to do with respect to the public  
 21 entities, sovereign immunity is part of the founding of  
 22 the United States. I think it's something that needs to  
 23 be considered carefully, subject to its own hearings,  
 24 subject to its own Bill. So I agree with you in

<p style="text-align: right;">Page 70</p> <p>1 principle. Do I have the data yet to assess the 2 comparison of the two? I don't.</p> <p>3 REPRESENTATIVE LAVELLE: Thank you very 4 much. And could not one of the challenges of gathering 5 that data is that there is a prohibition for the most 6 part of filing lawsuits against public institutions for 7 situations like we're talking about today?</p> <p>8 MS. MARCI HAMILTON: Well, as I understand 9 this Bill, the window opens up equally for private and 10 public, and learning about the past is key, is what we 11 just can't otherwise know, and so the only distinction, 12 as I understand the Bill, is going forward. And the 13 question is going forward whether or not a public 14 employee is going to be subject to gross negligence or 15 regular negligence. I take that that's the distinction?</p> <p>16 REPRESENTATIVE LAVELLE: I think. Again, 17 I'm not aware, but you're right, the distinction is that 18 they would not waive in the future, there is an 19 argument, and we know it as an argument.</p> <p>20 MS. MARCI HAMILTON: But it's not -- it's 21 not a hundred percent sovereign immunity, right? It is 22 limited immunity because gross negligence does permit 23 the lawsuit to go forward.</p> <p>24 REPRESENTATIVE LAVELLE: And we'll get into</p>	<p style="text-align: right;">Page 72</p> <p>1 REPRESENTATIVE LAVELLE: You mentioned - 2 and then I'll stop, Mr. Speaker - pedophiles know the 3 law.</p> <p>4 MS. MARCI HAMILTON: Yeah.</p> <p>5 REPRESENTATIVE LAVELLE: Pedophiles know 6 the law. They know what they can get away with and they 7 know what they can't. So they know what sort of law we 8 pass, don't they?</p> <p>9 MS. MARCI HAMILTON: Absolutely.</p> <p>10 REPRESENTATIVE LAVELLE: They know the law 11 we pass. We should stand for all victims. I'll ask the 12 same question that I asked Father Doyle, ma'am. I have 13 a picture of two children here, should one of them 14 receive more or less protection under the law?</p> <p>15 MS. MARCI HAMILTON: It's a ridiculous 16 question. No one would answer that question -- no one 17 would ever answer that question --</p> <p>18 SPEAKER OF THE HOUSE: Ladies and 19 gentlemen, please.</p> <p>20 MS. MARCI HAMILTON: -- in any way other 21 than all children deserve to be protected. The question 22 here is not do all children need to be protected. The 23 question here is what is the best legislative means of 24 doing it. And as I said earlier, it is patently clear</p>
<p style="text-align: right;">Page 71</p> <p>1 that. I do appreciate that. Did California waive its 2 immunity?</p> <p>3 MS. MARCI HAMILTON: Right now what's 4 happening in California, in fact it was just argued at 5 the California Supreme Court, is they're trying to 6 figure out whether or not the Bill was intended to cover 7 teachers. So far the courts have ruled it is not.</p> <p>8 REPRESENTATIVE LAVELLE: So there is 9 confusion within the intent in the California Bill to 10 cover teachers or not?</p> <p>11 MS. MARCI HAMILTON: It was not intended to 12 cover teachers. There have been some who have been 13 trying to use it and so far the courts have said that it 14 does not.</p> <p>15 REPRESENTATIVE LAVELLE: It does not. So 16 the courts have blessed the continued immunity in 17 California public schools.</p> <p>18 MS. MARCI HAMILTON: The courts have 19 deferred to the legislature.</p> <p>20 REPRESENTATIVE LAVELLE: So the legislature 21 is ultimately responsible for making the decisions about 22 what we waive for and who we waive to and who we hold 23 accountable, et cetera --</p> <p>24 MS. MARCI HAMILTON: Absolutely.</p>	<p style="text-align: right;">Page 73</p> <p>1 that we know what we need to do for the private 2 institutions. It is not so clear with respect to the 3 public institutions. So I favor ongoing research into 4 that question.</p> <p>5 REPRESENTATIVE LAVELLE: Thank you. But 6 you did say it is kind of silly of me to even ask the 7 questions I think was the essence of your response. 8 Well, why wouldn't it, right?</p> <p>9 MS. MARCI HAMILTON: It is silly of you to 10 ask that question because it's got nothing to do with 11 the legislative proposal.</p> <p>12 REPRESENTATIVE LAVELLE: With all due 13 respect, ma'am, I believe it does. These are my 14 children: One goes to a private school, one goes to a 15 public school. We'll get into that later with my 16 colleagues. Thank you.</p> <p>17 MS. MARCI HAMILTON: I have exactly the 18 same situation.</p> <p>19 REPRESENTATIVE LAVELLE: That's good. 20 Thank you.</p> <p>21 SPEAKER OF THE HOUSE: Any other questions 22 or comments for the witness? Thank you for your 23 testimony. You may be excused. Thank you. 24 Representative Hudson.</p>

19 (Pages 70 to 73)

<p style="text-align: right;">Page 74</p> <p>1 REPRESENTATIVE HUDSON: Thank you. That 2 ends the witnesses that we had planned, so it's on the 3 agenda to move to the amendments.</p> <p>4 SPEAKER OF THE HOUSE: Yes.</p> <p>5 REPRESENTATIVE HUDSON: I believe 6 Representative Lavelle is first.</p> <p>7 SPEAKER OF THE HOUSE: Thank you.</p> <p>8 REPRESENTATIVE LAVELLE: Mr. Speaker, may I 9 have House Amendment 2 to Senate Bill 29 read in?</p> <p>10 SPEAKER OF THE HOUSE: Yes, you may.</p> <p>11 REPRESENTATIVE LAVELLE: Thank you, 12 Mr. Speaker.</p> <p>13 SPEAKER OF THE HOUSE: Would you present 14 your amendment first --</p> <p>15 REPRESENTATIVE LAVELLE: Well, House 16 Amendment 1 was stricken. House Amendment 2 was 17 refiled.</p> <p>18 SPEAKER OF THE HOUSE: Okay. Thank you. 19 Mr. Clerk.</p> <p>20 THE CLERK: Mr. Speaker, House Amendment 21 number 2 to Senate Bill number 29 sponsored by 22 Representative Lavelle. Mr. Speaker, this constitutes 23 the first reading of House Amendment 2 to Senate Bill 29 24 by title only.</p>	<p style="text-align: right;">Page 76</p> <p>1 amendment?</p> <p>2 SPEAKER OF THE HOUSE: No. Representative 3 Lavelle.</p> <p>4 REPRESENTATIVE LAVELLE: Questions on the 5 amendment to the amendment, sir?</p> <p>6 SPEAKER OF THE HOUSE: No. All in favor of 7 House Amendment number 1 to House Amendment number 2 to 8 Senate Bill 29 indicate by saying aye.</p> <p>9 (Whereupon various members of the House 10 responded aye.)</p> <p>11 SPEAKER OF THE HOUSE: Opposed? Motion 12 carries.</p> <p>13 House Amendment number 1 is now with House 14 Amendment number 2 to Senate Bill 29.</p> <p>15 Representative Lavelle.</p> <p>16 REPRESENTATIVE LAVELLE: Thank you, 17 Mr. Speaker. House Amendment number 2 would simply 18 require every institution in the State, public and 19 private, to be equally responsible for the protection 20 and care of our children. I have spoken to all of my 21 colleagues, some ad nauseam about this amendment and the 22 intent of this amendment. We had testimony today that 23 demonstrates that pedophiles are everywhere. We had 24 testimony today that has demonstrated that institutions,</p>
<p style="text-align: right;">Page 75</p> <p>1 SPEAKER OF THE HOUSE: On the amendment, 2 Representative Lavelle.</p> <p>3 REPRESENTATIVE LAVELLE: Can I have an 4 amendment to the amendment?</p> <p>5 SPEAKER OF THE HOUSE: Please present your 6 amendment. Once again we'll wait until all the members 7 have a copy of the amendment.</p> <p>8 Mr. Clerk.</p> <p>9 THE CLERK: Mr. Speaker, this is amendment 10 number 1 to House Amendment number 2 to Senate Bill 11 number 29 sponsored by Representative Lavelle. 12 Mr. Speaker this constitutes the first reading of House 13 Amendment number 1 to House Amendment 2 to Senate Bill 14 29 by title only.</p> <p>15 SPEAKER OF THE HOUSE: Thank you. On the 16 amendment, Representative Lavelle.</p> <p>17 REPRESENTATIVE LAVELLE: Thank you, 18 Mr. Speaker. House Amendment number 1 to House -- I'm 19 sorry to House Amendment 2 Senate Bill 29 simply 20 clarifies that we're not trying to change the 21 Constitution and that's what it clarifies because that 22 can't be done through a statutory change. It's a 23 two-shot deal as we all know, so that is what the 24 amendment is for. Any questions on the amendment to the</p>	<p style="text-align: right;">Page 77</p> <p>1 institutions made up of men and women have often and 2 unfortunately failed our children. Pedophiles 3 unfortunately are through our society. There is no 4 prohibition unfortunately. There are steps we can take 5 to try to keep these monsters out of our public and 6 private institutions and we should take those steps: 7 Criminal background checks, the first whiff of 8 impropriety of sexual abuse or a question that something 9 wrong is going on to remove those alleged abusers from 10 that classroom, from that church, from that Little 11 League field, to find out if those allegations are true 12 or not. So it's accountability for all of our children. 13 It's protection for all of our children, leaving none 14 behind. Perhaps we should be the first state. The last 15 witness indicated other states have struggled with this, 16 have not really addressed it for lack of data. 17 Let's not wait for more data that shows 18 there is pedophiles in the ranks of public employees 19 because we know there are. There has been four arrests 20 in the last year of public school employees, for either 21 the rape or molestation of our children. In the last 22 year. One of those students was a special needs student 23 in one of our school districts. I don't know this 24 individual's -- this victim's, I'm sorry, I don't know</p>

20 (Pages 74 to 77)

<p style="text-align: right;">Page 78</p> <p>1 this victim's developmental issues but many disabled    2 cannot speak, cannot defend themselves. There is cases    3 that I have read for cases in the State of Delaware    4 where CP patients who default to the care of the State    5 have been molested by their caretakers who work for the    6 State of Delaware. We should be the first state. We    7 should eliminate the statute of limitations. We should    8 provide for the window so past victims can come forward    9 and face their accusers in court and we should exempt no    10 one from this law.</p> <p>11       Mr. Speaker, if there is any questions on    12 the amendment I'd be happy to take them.</p> <p>13       SPEAKER OF THE HOUSE: Representative    14 Kowalko.</p> <p>15       REPRESENTATIVE KOWALKO: Open dialogue?</p> <p>16       SPEAKER OF THE HOUSE: Open dialogue, sir.</p> <p>17       REPRESENTATIVE KOWALKO: Representative    18 Lavelle, would you agree that that Senate Bill 29 as    19 written, specifically lines 8 to 10, is intended to    20 repeal the statute of limitations in civil suits    21 relating to child sexual abuse cases?</p> <p>22       REPRESENTATIVE LAVELLE: Well, yeah, I    23 believe the intent is to do that and the intent is to    24 have the window apply equally to the State and private</p>	<p style="text-align: right;">Page 80</p> <p>1 equalizes the protection by law afforded both public and    2 private entities.</p> <p>3       REPRESENTATIVE LAVELLE: No, I do not agree    4 that that's what it does. I agree perhaps that that's    5 the intent, but I do not agree that that's what the    6 language does, and, again, I'll ask for Ron Smith to    7 address this issue. And, do you mind, Mr. Kowalko?</p> <p>8       SPEAKER OF THE HOUSE: Would you like to    9 ask for personal privilege of Ron Smith.</p> <p>10       REPRESENTATIVE LAVELLE: I'd like to ask    11 for personal privilege of Ron Smith.</p> <p>12       SPEAKER OF THE HOUSE: Okay. Without    13 objection so ordered.</p> <p>14       REPRESENTATIVE LAVELLE: On this particular    15 question.</p> <p>16       MR. RON SMITH: Ron Smith, house attorney.</p> <p>17       SPEAKER OF THE HOUSE: Representative    18 Kowalko, questions of the witness.</p> <p>19       MR. RON SMITH: How do you do, sir?</p> <p>20       REPRESENTATIVE KOWALKO: Thank you. Do you    21 -- you did agree on the first one, though, Mr. Lavelle,    22 do you want me to reiterate both questions for    23 Mr. Smith?</p> <p>24       REPRESENTATIVE LAVELLE: He's the lawyer.</p>
<p style="text-align: right;">Page 79</p> <p>1 institutions.</p> <p>2       REPRESENTATIVE KOWALKO: Yeah. On that    3 particular matter, it is the intent, it is the specific    4 subset of Bill 29 --</p> <p>5       REPRESENTATIVE LAVELLE: That is the    6 intent, thank you, sir.</p> <p>7       REPRESENTATIVE KOWALKO: -- that it is to    8 lift the statute of limitations.</p> <p>9       REPRESENTATIVE LAVELLE: Thank you, sir,    10 that is the intent. I don't think the language does it.    11 Thanks for prodding me and helping me with my    12 presentation. I don't think the language does that    13 because of issues of waiving -- of having to explicitly    14 waive limited sovereign immunity. Yes, that's the    15 intent, and, by the way, I'll have -- I'll ask Ron Smith    16 to come down, the House attorney, and sort of explain    17 that to some of us.</p> <p>18       REPRESENTATIVE KOWALKO: Would you agree    19 with me that with me as written in lines 11 through 15    20 that upon reaching the probable level of gross    21 negligence -- provable level of gross negligence, that    22 the coverage -- that the sovereign immunity protection    23 of any legal entity, any legal entity, is, in fact,    24 lifted for this look-back period of time, and, in fact,</p>	<p style="text-align: right;">Page 81</p> <p>1 He can answer the questions (inaudible to reporter) good    2 for clarity, sir.</p> <p>3       REPRESENTATIVE KOWALKO: Mr. Smith, do you    4 agree that Senate Bill 29, as written, and in particular    5 lines 8 through 10, is specifically intended to repeal    6 the statute of limitations in civil suits related to    7 child sexual abuse cases?</p> <p>8       MR. RON SMITH: Not as asked. It limits    9 the exception to two years. It creates a window. After    10 that the statute of limitations applies again.</p> <p>11       REPRESENTATIVE KOWALKO: But it is specific    12 -- the Bill is specifically written to repeal the    13 statute of limitations, could that be a fair synopsis?</p> <p>14       MR. RON SMITH: For only two years. It is    15 not a permanent doing away with the statute of    16 limitations.</p> <p>17       REPRESENTATIVE KOWALKO: Would you agree --    18 I agree with that.</p> <p>19       Would you agree that as written in lines 11    20 through 15 that upon reaching a provable level of gross    21 negligence that the sovereign immunity protections of    22 any legal entity is, in fact, lifted for this look-back    23 period of time and, in fact, equalizes protection by law    24 afforded to both private and public entities?</p>

21 (Pages 78 to 81)

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1 MR. RON SMITH: I would not agree as  
 2 worded. It does not define what is meant by a public  
 3 entity. It is vague on that point. The Constitutional  
 4 cases on this issue are very clear, that the General  
 5 Assembly must explicitly exempt the State to create the  
 6 liability. In other words, you must be specific, and  
 7 expressly determine your intention is to waive the  
 8 sovereign immunity requirements that otherwise would be  
 9 applicable. This, as it's worded on line 12, simply  
 10 says other public entity. It does not define what that  
 11 is.

12 REPRESENTATIVE KOWALKO: Is the State a  
 13 public entity?

14 MR. RON SMITH: It can be. It would be up  
 15 to the court to decide whether the State would be  
 16 covered by that provision or not.

17 REPRESENTATIVE KOWALKO: I'm not talking  
 18 about an interpretation of that provision. I'm asking  
 19 if the State is a public entity.

20 MR. RON SMITH: That would be a decision  
 21 for a court to make. We have not defined it in this  
 22 provision.

23 REPRESENTATIVE KOWALKO: Then the court  
 24 could determine that the State is not a public entity is

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1 REPRESENTATIVE LAVELLE: That these issues  
 2 are intertwined. We're talking about children. We  
 3 shouldn't be looking to ask where the child may or may  
 4 not go to school, who may or may not be under the  
 5 responsibility to care for that child. They're  
 6 children. They're all children. They're not children  
 7 here and children there. Looking -- I'm looking to  
 8 explicitly, with no room for a court to guess what my  
 9 intent was, to remove that from any argument that the  
 10 State is stepping up to the plate because this is such a  
 11 serious issue and is explicitly waiving sovereign and  
 12 limited immunity for the sexual abuse of children.

13 REPRESENTATIVE KOWALKO: With all due  
 14 respect, open dialogue, I believe that sovereign  
 15 immunity is a separate issue from what we're dealing  
 16 here with Senate Bill 29. Senate Bill 29's intent is to  
 17 enable a look-back and enable a lifting of statute of  
 18 limitations of civil suits specifically for these cases,  
 19 and I believe that, with all due respect to Mr. Smith,  
 20 that lines 11 through 14 provide that under the meaning  
 21 of the criteria of gross negligence. Thank you.

22 SPEAKER OF THE HOUSE: Thank you. Any  
 23 other questions of the witness? I have Representative  
 24 Hudson and Representative Gilligan. Any questions for

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1 what you're saying?

2 MR. RON SMITH: It could determine that it  
 3 is not the intent to waive sovereign immunity.

4 REPRESENTATIVE KOWALKO: No. I didn't ask  
 5 that question. I asked if the court could determine  
 6 that the State is not a public entity.

7 MR. RON SMITH: That -- the court will  
 8 decide how it believes the legislature intended this  
 9 legislation to be enacted.

10 REPRESENTATIVE KOWALKO: Just out of  
 11 curiosity, the question I'm asking is this, have you  
 12 ever experienced a court of law that declared that a  
 13 State was not a public entity?

14 MR. RON SMITH: No.

15 REPRESENTATIVE KOWALKO: Thank you.  
 16 Looking forward at your amendment, Representative  
 17 Lavelle, wouldn't it be more appropriately applied as  
 18 stand-alone legislation if, in fact, your intention is  
 19 to hold the State of Delaware accountable and equally  
 20 liable as all other entities and, in fact, lifting  
 21 sovereign immunity protections?

22 REPRESENTATIVE LAVELLE: No, I don't  
 23 believe so. Open dialogue, Mr. Speaker?

24 SPEAKER OF THE HOUSE: Yes, sir.

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1 the witness, Representative Hudson?

2 REPRESENTATIVE HUDSON: Yes. Mr. Smith,  
 3 most of what you said applies to amendment five, right?

4 MR. RON SMITH: Correct.

5 REPRESENTATIVE HUDSON: So we're within ten  
 6 minutes of correcting everything you said, correct?

7 MR. RON SMITH: Correct. Amendment 5  
 8 addresses that same concern.

9 REPRESENTATIVE HUDSON: Okay. So -- thank  
 10 you.

11 REPRESENTATIVE LAVELLE: But,  
 12 Mr. Speaker --

13 SPEAKER OF THE HOUSE: Yes, open dialogue.

14 REPRESENTATIVE LAVELLE: But I know we're  
 15 jumping ahead, but so people don't expect - Amendment 5  
 16 does not waive for the future. It waives for this  
 17 two-year period, is that correct, Mr. Smith?

18 MR. RON SMITH: This whole act will only  
 19 apply for two years as written. Without this amendment  
 20 or some other amendment that would --

21 REPRESENTATIVE LAVELLE: All you're doing  
 22 with this Bill is you're waiving the statute of  
 23 limitations for two years. After that, the statute of  
 24 limitations comes back. The sovereign immunity question

22 (Pages 82 to 85)

<p style="text-align: right;">Page 86</p> <p>1 is a defense question and the language here does not 2 expressly say sovereign immunity. It can be interpreted 3 that way but it's subject to interpretation. 4       Open dialogue, Mr. Speaker? 5       SPEAKER OF THE HOUSE: Yes, sir. 6       REPRESENTATIVE LAVELLE: But on Senate Bill 7 29 itself there is also this future provision outside of 8 the window and as currently drafted I don't believe that 9 the State waives or even the intent to waive under an 10 amended 29 sovereign and limited immunity for future 11 cases of child abuse. 12       MR. RON SMITH: That is correct. It's just 13 addressing these two years as written. 14       REPRESENTATIVE LAVELLE: Okay. Thank you, 15 sir. 16       SPEAKER OF THE HOUSE: Okay. I have 17 Representative Gilligan and Representative Marshall in 18 that order. Representative Gilligan, question of the 19 witness? 20       REPRESENTATIVE GILLIGAN: I'm interested in 21 seeing House Amendment number 5 but I don't suppose 22 we're going to see that for awhile. 23       SPEAKER OF THE HOUSE: We're not on House 24 Amendment number 5. That was an error. Representative</p>	<p style="text-align: right;">Page 88</p> <p>1 as low as negligence or whatever you can bring cause of 2 action for. The sovereign immunity, the qualified 3 immunity on the State and the State's actors is set at 4 gross negligence and if I -- I'm trying to get an 5 understanding here of the legal lay of the land. If 6 Representative Lavelle's amendment passes then it would 7 say the State can be held not just to the higher 8 standard of gross negligence but also to what all the 9 other entities would, like the Boys and Girls Club, the 10 YMCA, that regular negligence standard. My question for 11 you is this, can you give me an example of in the child 12 sex abuse situation what could a school do or a 13 principal do that is simply negligent that -- that if we 14 did not pass Representative Lavelle's amendment these 15 children would not have the protection? I'm trying to 16 get a sense of the difference between simple negligence 17 versus the gross negligence; in other words, passing 18 Representative Lavelle's amendment, not passing 19 Representative Lavelle's amendment. 20       MR. RON SMITH: Well, gross negligence 21 obviously implies a reckless disregard, whereas simple 22 negligence is a lot easier to establish. It's not 23 reckless disregard. It's just not paying attention. 24       REPRESENTATIVE MARSHALL: Could you give</p>
<p style="text-align: right;">Page 87</p> <p>1 Hudson mentioned House Amendment number 5 but we're 2 right now on House Amendment number 2. 3       REPRESENTATIVE GILLIGAN: I don't have any 4 questions on this amendment right now. 5       SPEAKER OF THE HOUSE: Okay. 6       REPRESENTATIVE GILLIGAN: Mr. Speaker, I do 7 wish to have a roll call, however, on the amendment I 8 will say that right now. 9       SPEAKER OF THE HOUSE: Okay. Thank you for 10 your request then. That's up to the sponsor. 11       REPRESENTATIVE LAVELLE: Mr. Speaker, I 12 intended to do that as well, so thank you Representative 13 Gilligan. 14       SPEAKER OF THE HOUSE: Okay. 15 Representative Marshall. Thank you for your patience. 16       REPRESENTATIVE MARSHALL: Thank you, 17 Mr. Speaker. Thank you. Mr. Smith, could you help me 18 understand and give me an example, perhaps, of the Bill 19 without the amendment, I'm talking just going forward 20 now, I'm not talking about the look-back provision, the 21 Bill going forward in subsection A you would allow a 22 suit based on negligence, gross negligence, intentional, 23 willful conduct, I mean, as long as there is a cause of 24 action an entity can be sued. Okay. So the standard is</p>	<p style="text-align: right;">Page 89</p> <p>1 me, I appreciate that very much and I understand the 2 legalese of it. I understand what gross negligence is 3 and I understand what negligence is. But can you give 4 me any concrete example of what would be - and maybe 5 this is an unfair question because it just hasn't 6 happened yet - but I'm really trying to get at is what 7 is a situation of negligence where we're going to be 8 saying it's okay that the State is not sued for this 9 versus gross negligence where we say, you know what, the 10 State loses its immunity because we decided it's so bad. 11 I'm just trying to get a sense of what the distinction 12 is. 13       MR. RON SMITH: It's very difficult without 14 knowing specific circumstances of what has happened say 15 in the school and what the administration knew or didn't 16 know, and whether they complied with all the 17 requirements, background checks and things of that 18 nature. Any error could amount to simple negligence, 19 whereas they just overlooked or they didn't follow 20 through on something could be simple negligence. Then 21 depending on what they overlooked and how much knowledge 22 they had it could amount to gross negligence. That's 23 the whole court process. 24       REPRESENTATIVE MARSHALL: Okay. That helps</p>

23 (Pages 86 to 89)

<p style="text-align: right;">Page 90</p> <p>1 somewhat. Thank you very much.</p> <p>2 SPEAKER OF THE HOUSE: I have</p> <p>3 Representative Stone, questions of the witness?</p> <p>4 REPRESENTATIVE STONE: Mr. Speaker, I have</p> <p>5 a question for the sponsor and then a question for the</p> <p>6 witness. So I hate for you to dismiss --</p> <p>7 SPEAKER OF THE HOUSE: Okay. Please,</p> <p>8 Representative Lavelle.</p> <p>9 REPRESENTATIVE STONE: -- the witness, if I</p> <p>10 may, open dialogue with the sponsor?</p> <p>11 SPEAKER OF THE HOUSE: Yes.</p> <p>12 REPRESENTATIVE STONE: Representative</p> <p>13 Lavelle, you're obviously a sponsor of Senate Bill 29</p> <p>14 and my question is pretty simple. Did you intend for</p> <p>15 the public sector to be included in this Bill?</p> <p>16 REPRESENTATIVE LAVELLE: Open dialogue,</p> <p>17 Mr. Speaker?</p> <p>18 SPEAKER OF THE HOUSE: Yes, sir.</p> <p>19 REPRESENTATIVE LAVELLE: Yes,</p> <p>20 Representative Stone that has always been my intent. I</p> <p>21 don't view as I said before and I'm sure I'll say again,</p> <p>22 a distinction between children. That has always been my</p> <p>23 intent.</p> <p>24 REPRESENTATIVE STONE: Thank you very much.</p>	<p style="text-align: right;">Page 92</p> <p>1 MR. RON SMITH: I think you would get</p> <p>2 disagreement.</p> <p>3 REPRESENTATIVE STONE: Half a dozen. Okay.</p> <p>4 And the only way that will ever be determined is by very</p> <p>5 costly, very lengthy litigation?</p> <p>6 MR. RON SMITH: Absolutely.</p> <p>7 REPRESENTATIVE STONE: So if we are all in</p> <p>8 agreement in this room that the intent of the sponsors</p> <p>9 of this Bill was to include the public sector in it,</p> <p>10 there is absolutely no harm brought about by</p> <p>11 Representative Lavelle's amendment because what it does,</p> <p>12 as you have so eloquently pointed out, is it clarifies</p> <p>13 that the public sector is to be included. I commend</p> <p>14 Representative Lavelle for offering this amendment. I</p> <p>15 commend him for his attempt to make sure that there is</p> <p>16 no distinction going forward in the State of Delaware</p> <p>17 that the intent of this General Assembly was to protect</p> <p>18 all of our children.</p> <p>19 Close your eyes for a moment and imagine</p> <p>20 that you have two children standing in front of you who</p> <p>21 have been abused, one by a private -- by someone who is</p> <p>22 a teacher or a counselor in a private institution, and</p> <p>23 the other who has been abused by someone who works in a</p> <p>24 public institution. Tell me that you're comfortable</p>
<p style="text-align: right;">Page 91</p> <p>1 Now my question is for the witness.</p> <p>2 SPEAKER OF THE HOUSE: Yes, Representative.</p> <p>3 REPRESENTATIVE STONE: Mr. Speaker, open</p> <p>4 dialogue?</p> <p>5 SPEAKER OF THE HOUSE: Yes, Representative.</p> <p>6 REPRESENTATIVE STONE: Mr. Smith, thank you</p> <p>7 for being here. Isn't it true that when legal</p> <p>8 agreements are sometimes being hashed out you might have</p> <p>9 one side of the legal agreement perhaps thinking that</p> <p>10 part of an issue is already covered in the agreement?</p> <p>11 But you might have the other part of the agreeing</p> <p>12 parties think well, it isn't clear to me that it's</p> <p>13 covered in the agreement, so I would like to add some</p> <p>14 language so that there is never a question that that was</p> <p>15 our intent and that the additional language does, in</p> <p>16 fact, clarify that that was the intent and it becomes</p> <p>17 part of the agreement?</p> <p>18 MR. RON SMITH: Very often that's the case.</p> <p>19 REPRESENTATIVE STONE: Very often that's</p> <p>20 the case. If you asked a dozen lawyers, no, bear with</p> <p>21 me, please, if you asked a dozen lawyers whether or not</p> <p>22 they believe the public sector is included in this Bill,</p> <p>23 you might get at least a dozen different answers, would</p> <p>24 that be true, safe to say?</p>	<p style="text-align: right;">Page 93</p> <p>1 telling those children that they are going to be treated</p> <p>2 differently because they were abused by two different</p> <p>3 people. I don't think that's what we're here to do</p> <p>4 today. I don't think any of us would be comfortable in</p> <p>5 setting up a different standard for Delaware's children,</p> <p>6 and I thank you for offering the amendment and I intend</p> <p>7 to support it and I would ask my colleagues to support</p> <p>8 it as well.</p> <p>9 SPEAKER OF THE HOUSE: I have</p> <p>10 Representative Hudson next.</p> <p>11 REPRESENTATIVE HUDSON: Thank you.</p> <p>12 Mr. Smith, in the look-back period are the private and</p> <p>13 public victims treated the same?</p> <p>14 MR. RON SMITH: Yes, in this Bill.</p> <p>15 REPRESENTATIVE HUDSON: Okay. So everybody</p> <p>16 knows that.</p> <p>17 MR. RON SMITH: That assumes that the</p> <p>18 courts would -- would say sovereign immunity has been</p> <p>19 waived.</p> <p>20 REPRESENTATIVE HUDSON: Right.</p> <p>21 MR. RON SMITH: That is -- the issue is</p> <p>22 whether we're expressly stating that to meet any court</p> <p>23 requirement that our intent be expressly stated.</p> <p>24 REPRESENTATIVE HUDSON: Well, and if you</p>

24 (Pages 90 to 93)

<p style="text-align: center;">Page 94</p> <p>1 want to speak to the attorney who wrote the Bill he's    2 here if anyone wants to do that. But let me move to    3 another part that I think is a little complicated but we    4 have to talk about it. A State employee that commits    5 gross negligence, which is what I would call child    6 sexual abuse, would not have immunity because that would    7 be an act of gross negligence. So Representative    8 Lavelle is right to be worried about a child under a    9 school's supervision, but the gross negligence would put    10 them in a level where they would be, well, probably    11 arrested, et cetera, but in terms of the civil situation    12 they would be sued. Isn't that right?</p> <p>13 MR. RON SMITH: Correct.</p> <p>14 REPRESENTATIVE HUDSON: Okay. Well, then I    15 think I made my point and we'll --</p> <p>16 SPEAKER OF THE HOUSE: Representative    17 Wagner, comments or questions to the witness?</p> <p>18 REPRESENTATIVE WAGNER: I'm not sure. I    19 think it's to the witness. I'm not really sure. It    20 might be to Representative Kowalko because I'm trying to    21 figure this out and I'm lost. Okay. If -- if what    22 we're talking about, personal privilege for    23 communication?</p> <p>24 SPEAKER OF THE HOUSE: Yes.</p>	<p style="text-align: center;">Page 96</p> <p>1 addressing waiver of sovereign immunity.</p> <p>2 REPRESENTATIVE WAGNER: Then my question,    3 if I could, to Representative Kowalko because I was    4 trying to follow what he was saying, can I assume, maybe    5 I can't, can you tell me if you are in favor of not    6 having the State sovereign immunity in this so that the    7 kids -- do you want the kids to be treated the same or    8 do you want them treated differently?</p> <p>9 REPRESENTATIVE KOWALKO: I always want the    10 kids treated the same. What I don't think is the    11 intention of this Bill, Senate Bill 29 and never has    12 been, is to go forward and waive sovereign immunity of    13 the State. And I think if that is -- is, in fact,    14 inserted into this Bill, yes, it will go back to the    15 Senate and fall.</p> <p>16 REPRESENTATIVE WAGNER: Okay. Then that    17 then -- my question, I think I'm clear now, you just    18 like many of us here, are in favor of in these types of    19 abuses that the State does not invoke sovereign immunity    20 and say we're not responsible. You're in favor of the    21 kids being treated the same. Your fear is, not the    22 issue of sovereign immunity, but your fear is that we    23 will not have time to finish this Bill and get it back    24 to the Senate and get it passed and you want a Bill to</p>
<p style="text-align: center;">Page 95</p> <p>1 REPRESENTATIVE WAGNER: Thank you. If what    2 we're doing is clarifying that this is what we mean    3 about sovereign immunity, then I would like to ask I    4 guess the witness and then perhaps Representative    5 Kowalko why someone would be opposed to this. If you    6 tell me I'm opposed to it because that means it is an    7 amendment and it goes back to the Senate and it might    8 not get through this session then I understand that.    9 But I don't understand anything, I'm not understanding    10 why someone is opposed to simply clarifying something    11 that deals with sexual abuse of children unless we just    12 want to be argumentative. I just -- I don't know what    13 damage it does to clarify this. So is there any damage    14 done to clarify this?</p> <p>15 MR. RON SMITH: Well, if the intent is to    16 not have the State and its institutions.</p> <p>17 SPEAKER OF THE HOUSE: Can you talk into    18 the mic a little more?</p> <p>19 MR. RON SMITH: Is the intent is to not    20 have the State raise the defense of sovereign immunity    21 then the amendment makes it very clear, it expressly    22 states that that is what the legislative intent is and    23 the courts have been reluctant to read in a legislative    24 intent that is not very clearly stated when you're</p>	<p style="text-align: center;">Page 97</p> <p>1 be put in place.</p> <p>2 REPRESENTATIVE KOWALKO: No. No. One of    3 my fears is that this issue will not be addressed, and    4 this issue is the ability of our children, of those    5 children who have been molested, of those children whose    6 futures have been ruined and that the attempts to cover    7 up this issue have been and been made and have been    8 many, that they have access to recourse - and they're no    9 longer children at this time - and that this Bill    10 provides for that. And I believe that the issue of    11 sovereign immunity in leading forward should be    12 addressed as separate legislation because it's a very    13 serious consequence that we need to address the issue of    14 waiving of sovereign immunity that we look at it more    15 intently.</p> <p>16 Now, as far as this Bill's application to    17 it, it does not waive sovereign immunity so much as it    18 institutes a gross negligence requirement which, in    19 effect, does have the prospect -- does have the actual    20 effect much waiving sovereign immunity.</p> <p>21 REPRESENTATIVE WAGNER: Okay. If I could    22 continue this conversation with the witness. If you are    23 talking about waiving sovereign immunity in this Bill    24 are we talking about waiving it in any other</p>

25 (Pages 94 to 97)

<p style="text-align: center;">Page 98</p> <p>1 circumstances except in context of this Bill?</p> <p>2 MR. RON SMITH: Only for this Bill.</p> <p>3 REPRESENTATIVE WAGNER: Okay. So what</p> <p>4 we're talking about is waiving sovereign immunity for</p> <p>5 this Bill and this Bill alone. What we're saying is</p> <p>6 this clarifies that is the intent, so I fail to</p> <p>7 understand why you're afraid of sovereign immunity</p> <p>8 issues swirling about everything because it has nothing</p> <p>9 to do with anything that's not in this Bill. Sovereign</p> <p>10 immunity in this context is for this Bill. The</p> <p>11 clarification makes it clear. If you want kids treated</p> <p>12 the same in this instance when you're talking about</p> <p>13 abuse it seems that the clarification would be a good</p> <p>14 thing. If, in fact, what you're worried about is the</p> <p>15 Bill may not have a chance to go back to the Senate and</p> <p>16 get passed and therefore the Bill will not be put in</p> <p>17 place which we need to be put in place, that I</p> <p>18 understand. Other than that I don't understand why</p> <p>19 you're afraid of clarifying it. Thank you.</p> <p>20 SPEAKER OF THE HOUSE: Thank you,</p> <p>21 Representative. Any questions, any additional questions</p> <p>22 for the witness? No other questions. You may be</p> <p>23 excused. Thank you, Mr. Smith.</p> <p>24 Representative Lavelle.</p>	<p style="text-align: center;">Page 100</p> <p>1 House Amendment number 1 to House Amendment number 2 on</p> <p>2 the speaker's table. All in favor signify by saying</p> <p>3 aye.</p> <p>4 (Whereupon various members of the House of</p> <p>5 Representatives replied aye.)</p> <p>6 SPEAKER OF THE HOUSE: Opposed? Motion</p> <p>7 carries. House Amendment number 2 with House Amendment</p> <p>8 number 1 to House Amendment number 2 to Senate Bill 29</p> <p>9 laid on the Speaker's table.</p> <p>10 Representative Hudson.</p> <p>11 REPRESENTATIVE HUDSON: Thank you,</p> <p>12 Mr. Speaker. I have House Amendment number 3. May I</p> <p>13 have it read in, sir?</p> <p>14 SPEAKER OF THE HOUSE: Yes, you may.</p> <p>15 Mr. Clerk.</p> <p>16 THE CLERK: Mr. Speaker, House Amendment</p> <p>17 number 3 to Senate Bill number 29 sponsored by</p> <p>18 Representative Hudson. Mr. Speaker, this constitutes</p> <p>19 the first reading of this Amendment 3 to Senate Bill 29</p> <p>20 by title only.</p> <p>21 SPEAKER OF THE HOUSE: Okay. On the</p> <p>22 amendment, Representative Hudson.</p> <p>23 REPRESENTATIVE HUDSON: Greg, so what are</p> <p>24 you doing?</p>
<p style="text-align: center;">Page 99</p> <p>1 REPRESENTATIVE LAVELLE: Thank you,</p> <p>2 Mr. Speaker. I stand for all victims, again, past,</p> <p>3 present and future, regardless of who assaulted them,</p> <p>4 regardless of the institution that was to care for them.</p> <p>5 I am not here to make anyone uncomfortable with this</p> <p>6 vote. I am not here to call into questions anyone's</p> <p>7 integrity with this vote. I understand there is concern</p> <p>8 about this amendment amongst other reasons that attorney</p> <p>9 Flynn may have had something to do with it. I</p> <p>10 understand that was a concern. These are -- this is my</p> <p>11 intent. These are my words. I do not intend to put any</p> <p>12 of you on either side of this aisle in a position where</p> <p>13 you would say someone could accuse you of simply</p> <p>14 accepting a church amendment. This is not a church</p> <p>15 amendment for clarity. This is Greg Lavelle's</p> <p>16 amendment. These are Greg Lavelle's intentions. But I</p> <p>17 am not going to put you all in that position.</p> <p>18 Mr. Speaker, I move that we table House</p> <p>19 Amendment 2 to Senate Bill 29 as amended by House</p> <p>20 Amendment number 1.</p> <p>21 SPEAKER OF THE HOUSE: Hear a second?</p> <p>22 UNIDENTIFIED REPRESENTATIVE: Second.</p> <p>23 SPEAKER OF THE HOUSE: Motion has been made</p> <p>24 and seconded to table House Amendment number 2 with</p>	<p style="text-align: center;">Page 101</p> <p>1 SPEAKER OF THE HOUSE: Hang in there with</p> <p>2 us. The sponsor of the Bill is working on discussing</p> <p>3 her amendment, so . . . Representative Hudson, on</p> <p>4 House Amendment number 3.</p> <p>5 REPRESENTATIVE HUDSON: Yes. House</p> <p>6 Amendment number 3 was suggested to me by our</p> <p>7 Representative in the Joint Finance Committee. It seems</p> <p>8 that it's more appropriate when you have a Bill with a</p> <p>9 fiscal note if you say that the Bill would be effective</p> <p>10 when the funds are appropriated. So this is just an</p> <p>11 encouragement for JFC to appropriate money for this Bill</p> <p>12 and if there is no other questions, voice vote on this</p> <p>13 amendment.</p> <p>14 SPEAKER OF THE HOUSE: All in favor of</p> <p>15 House Amendment number 3 to Senate Bill 29 indicate by</p> <p>16 saying aye.</p> <p>17 (Whereupon various members of the House of</p> <p>18 Representatives replied aye.)</p> <p>19 SPEAKER OF THE HOUSE: Opposed? Motion</p> <p>20 carries. House Amendment number 3 is now part of Senate</p> <p>21 Bill 29. On the Bill's amendment, Representative</p> <p>22 Hudson.</p> <p>23 REPRESENTATIVE HUDSON: I'm sorry, what did</p> <p>24 you say?</p>

26 (Pages 98 to 101)

<p style="text-align: center;">Page 102</p> <p>1 SPEAKER OF THE HOUSE: House Amendment 2 number 3 is part of the Bill, Senate Bill 29. 3 REPRESENTATIVE HUDSON: Thank you. And I 4 believe there is more amendments. 5 SPEAKER OF THE HOUSE: Okay. 6 Representative Lavelle. 7 REPRESENTATIVE LAVELLE: Mr. Speaker, I 8 have an amendment to produce. 9 SPEAKER OF THE HOUSE: Please present your 10 amendment. 11 REPRESENTATIVE LAVELLE: Yes. 12 SPEAKER OF THE HOUSE: Once again, we'll 13 wait until all the members have a copy of the amendment. 14 Mr. Clerk. 15 THE CLERK: Mr. Speaker, House Amendment 16 number 4 to Senate Bill 29 sponsored by Representative 17 Lavelle. Mr. Speaker, this constitutes the first 18 reading of House Amendment number 4 to Senate Bill 29 by 19 title only. 20 SPEAKER OF THE HOUSE: Representative 21 Lavelle on the amendment. 22 REPRESENTATIVE LAVELLE: Thank you, 23 Mr. Speaker. House Amendment number 4 does the same 24 thing, the intent, the end result is the same as House</p>	<p style="text-align: center;">Page 104</p> <p>1 REPRESENTATIVE LAVELLE: We don't need to 2 go through all your testimony again. I have no further 3 questions, Mr. Speaker. 4 SPEAKER OF THE HOUSE: You may be excused 5 Mr. Smith. Representative Lavelle. 6 REPRESENTATIVE LAVELLE: Mr. Speaker, I 7 stand for all victims past, present and future. I stand 8 for all victims. There are 122,000 public school 9 students in the State of Delaware, approximately 15,000 10 of those public school students are special needs or 11 special education. Some of those public school students 12 have severe developmental issues. My son is one of 13 them. I stand for all victims, Mr. Speaker. We care 14 for by default in this State some of the most 15 vulnerable, some of the most at-risk people in our 16 State. Many of those people come from families that are 17 equally at risk and vulnerable and often cannot speak 18 for themselves, either literally in the case of many 19 children, or figuratively in the case of some of these 20 families. 21 The amendment is simple. My intent is 22 simple. We include everyone. We leave no one out. We 23 should not fear this. We should embrace this amendment. 24 The words that best support my amendment, Mr. Speaker,</p>
<p style="text-align: center;">Page 103</p> <p>1 Amendment number 2. House Amendment number 4 is the 2 exact language from last year's House Substitute 1 to 3 House Bill 450. Tony Flynn had nothing to do with it. 4 I'm not looking to put anybody in a box. I want you 5 comfortable with the intent and where the amendment came 6 from. This language is the exact language from last 7 year's HS 1 to HB 450. Many of you were sponsors and 8 co-sponsors of that legislation. The intent is to 9 waive, unquestionably waive, sovereign and limited 10 immunity and the window and the intent to waive 11 sovereign and limited immunity in the future. I'd ask 12 for personal privilege from Ron Smith just to clarify 13 that from a legal standpoint. 14 SPEAKER OF THE HOUSE: Yes, sir, without 15 objection so ordered. 16 MR. RON SMITH: Ron Smith, House attorney. 17 REPRESENTATIVE LAVELLE: Mr. Smith, in your 18 estimation does this achieve the same intent of House 19 Amendment number 2 just using different words? 20 MR. RON SMITH: Yes. 21 REPRESENTATIVE LAVELLE: So there is always 22 in legal writing ways to get to the same end simply 23 using different words and this does that? 24 MR. RON SMITH: Correct.</p>	<p style="text-align: center;">Page 105</p> <p>1 and ladies and gentlemen, are the words of many of the 2 victims' advocates, equal access to courts, equal 3 treatment under the law, the ability to face an accuser 4 after years of abuse or in the future, let no one hide, 5 treat all children equally. Mr. Speaker, that is all 6 this amendment does. It costs the State nothing. We 7 should deal with this issue today. If we want to be the 8 first state, we should be the first state that stands up 9 for all of our children, all of our children, beyond 10 question, and that's what I ask you, ladies and 11 gentlemen, to do today, leave no child behind in the 12 future. Leave no victim behind ever. 13 Mr. Speaker, unless there are any questions 14 I'll ask for a roll call. 15 SPEAKER OF THE HOUSE: Thank you, 16 Representative Lavelle. I have Representative Valihura, 17 Representative Gilligan, Representative Hudson, 18 Representative Valihura, open dialogue. 19 REPRESENTATIVE VALIHURA: Thank you. Open 20 dialogue with the sponsor, please. Thank you. I have 21 now listened to 11 and a half hours of public testimony. 22 I have had countless, countless private conversations 23 with the sponsor. I have had numerous discussions with 24 my colleagues. I have yet to hear the reason why this</p>

<p style="text-align: right;">Page 106</p> <p>1 should not be added to this Bill, and I am rising now to 2 see if I can't get a public explanation as to why we 3 should not add this to this Bill before we vote on it. 4 SPEAKER OF THE HOUSE: I have 5 Representative Gilligan and then Representative Hudson, 6 in that order. Open dialogue, sir. 7 REPRESENTATIVE GILLIGAN: Thank you, 8 Mr. Speaker. Representative Valihura, I think it 9 confuses the issue. We feel the original Bill deals 10 with both public and private sector. If we're going to 11 get a Bill here this evening I suggest we defeat this 12 and we pass the Bill. We are in the same place today, 13 sir, as we were this time last year, and you wanted an 14 answer, that's my answer. 15 SPEAKER OF THE HOUSE: Ladies and 16 gentlemen, I know it's an emotional issue and there is a 17 lot of support in this chamber for you but there are 18 some others that want to discuss the issue and if you 19 continue to keep clapping we can't allow that. And I 20 understand why you're here and I support why you're 21 here, but, please, out of respect for the members who 22 are asking questions and debating hang in there a little 23 longer. You have been very patient and I and my 24 colleagues appreciate it. Representative.</p>	<p style="text-align: right;">Page 108</p> <p>1 agreement that we ought to waive sovereign immunity and 2 we ought to do it. So if we're going to do it, let's 3 make it crystal clear. 4 SPEAKER OF THE HOUSE: Any other questions? 5 Representative Maier and then I'll come back. I'm 6 sorry, Representative Hudson. 7 REPRESENTATIVE HUDSON: That's all right. 8 I'll yield to Representative Maier. 9 SPEAKER OF THE HOUSE: Okay. 10 Representative Maier and then I'll come back to 11 Representative Hudson. 12 REPRESENTATIVE MAIER: I believe I'm 13 needing clarification for the reason why the Bill didn't 14 pass last year, if you don't mind. 15 SPEAKER OF THE HOUSE: Okay. 16 Representative Lavelle, can you help Representative 17 Maier out? 18 REPRESENTATIVE LAVELLE: Thank you, Mr. 19 Speaker. Okay. I'll give Representative Maier my 20 analysis of why the Bill didn't pass last year. Last 21 year we struggled with the question of sovereign and 22 limited immunity. We -- as in this amendment that we're 23 contemplating today. This was in HS 1 to HB 450, this 24 exact language. There was concern over the cost to the</p>
<p style="text-align: right;">Page 107</p> <p>1 REPRESENTATIVE GILLIGAN: Representative, I 2 respect Representative Valihura. I know what he's 3 doing. I know where his heart is. I just feel this 4 amendment is going too far. We believe the Bill does 5 what he wants done and we feel that the Bill would be 6 better off without this amendment. We'll pass it 7 tonight. He can get it back to the Senate if it passes, 8 it gets upstairs, and this year we will have a Bill 9 which we could have had last year. 10 REPRESENTATIVE VALIHURA: Open dialogue. 11 SPEAKER OF THE HOUSE: Yes, sir. 12 REPRESENTATIVE VALIHURA: Now I am 13 completely confused. 14 SPEAKER OF THE HOUSE: Representative 15 Valihura. 16 REPRESENTATIVE VALIHURA: And if there was 17 ever, ever a need to make a clarifying amendment we have 18 just heard it. I had a constitutional lawyer testify 19 that this Bill doesn't deal with sovereign immunity, a 20 constitutional lawyer who went to law school with me, 21 who graduated at the top of her class and now you're 22 telling me just the opposite. I don't know who to 23 believe. I believe that if you're doing this, you 24 better make it clear, and apparently everyone is in</p>	<p style="text-align: right;">Page 109</p> <p>1 State. I think that's misplaced but there was concern, 2 legitimate concern on the cost to the State. What would 3 it do to the school districts. We have had an 4 opportunity, Representative Gilligan, to move and learn 5 more about all of this, all of us have. I know I have. 6 So I do think we have moved forward. Through amendments 7 we gave back immunity to the State because of cost 8 considerations, and then we kind of took it out again in 9 another amendment and we gave it to the school districts 10 again in a limited way. And at the end of the day we 11 got a Bill back at 3:30 in the morning or thereabout 12 that limited lawsuits, did not provide for a window, and 13 limited lawsuits to strictly the abuser, and it 14 contained, I believe, most of the issues of sovereign 15 and limited immunity and the Bill did not get voted on. 16 As the lead sponsor in the House at that time said I 17 don't believe it's a good idea to work legislation at 18 3:30 in the morning, I don't care what it is, and 19 particularly an issue that's as important as this is, 20 that we should see it in the light of day, that's why I 21 believe and that's the history of why it didn't pass and 22 that's what I believe and others can disagree with me. 23 REPRESENTATIVE MAIER: So, open dialogue, 24 Mr. Speaker?</p>

<p style="text-align: right;">Page 110</p> <p>1 SPEAKER OF THE HOUSE: Yes.</p> <p>2 REPRESENTATIVE MAIER: So the Bill that</p> <p>3 came to us at 3:30 in the morning, how does that differ</p> <p>4 with what we should do with or without your amendment?</p> <p>5 REPRESENTATIVE LAVELLE: Significantly. It</p> <p>6 did not provide for a window. There was no back</p> <p>7 lawsuits and it allowed for future lawsuits only suits</p> <p>8 against the abuser. It changed the statute of</p> <p>9 limitations to 18 years, age of majority plus 25, so you</p> <p>10 had to be 43 -- you couldn't file lawsuit after being 43</p> <p>11 in future cases. So there are significant differences.</p> <p>12 REPRESENTATIVE MAIER: So this is a new,</p> <p>13 improved Bill. It's had many hours of debate as we</p> <p>14 heard. The committees and the Senate has given us their</p> <p>15 opinion as to this issue, and as the House we have every</p> <p>16 right to do whatever we feel is appropriate to change or</p> <p>17 amend what the Senate sends to us and then they can do</p> <p>18 as they will over there. I don't agree with</p> <p>19 Representative Kowalko that they won't pass this Bill</p> <p>20 should we amend it. It's already amended with or</p> <p>21 without the changes that Representative Lavelle is</p> <p>22 advocating.</p> <p>23 The next question I have is do we know how</p> <p>24 our governor feels about this Bill, amended or not</p>	<p style="text-align: right;">Page 112</p> <p>1 amendment to the Bill is, in fact, the sponsor of the</p> <p>2 Bill. Representative Hudson --</p> <p>3 REPRESENTATIVE GILLIGAN: This the Bill was</p> <p>4 all right at one time.</p> <p>5 SPEAKER OF THE HOUSE: Okay. But I'm just</p> <p>6 saying the amendment that was attached to this Bill is</p> <p>7 the prime sponsor amended her Bill.</p> <p>8 REPRESENTATIVE GILLIGAN: Mr. Speaker, at</p> <p>9 one time this Bill was fine. It had already sponsors</p> <p>10 when it was introduced.</p> <p>11 SPEAKER OF THE HOUSE: Okay. Thank you.</p> <p>12 REPRESENTATIVE GILLIGAN: The point I'm</p> <p>13 trying to make now we have amendment. Anyway, I'd like</p> <p>14 to help Representative Lavelle, sir, why don't you</p> <p>15 introduce your thoughts in a separate Bill and let us</p> <p>16 pass this?</p> <p>17 SPEAKER OF THE HOUSE: Representative</p> <p>18 Kowalko, I know your comment, there was a comment</p> <p>19 directed towards you and maybe you'd like to respond.</p> <p>20 REPRESENTATIVE KOWALKO: Yeah, let me</p> <p>21 correct that. I never said that my objection to any of</p> <p>22 these amendments is because it will not pass muster in</p> <p>23 the Senate. I will say again, and I reiterate, that</p> <p>24 Senate Bill 29 as it is written provides for a lifting</p>
<p style="text-align: right;">Page 111</p> <p>1 amended, and I would like to ask if anyone could answer</p> <p>2 that question?</p> <p>3 SPEAKER OF THE HOUSE: Representative</p> <p>4 Hudson may be able to answer that.</p> <p>5 REPRESENTATIVE LAVELLE: I do not know,</p> <p>6 sir.</p> <p>7 REPRESENTATIVE MAIER: Has anyone asked her</p> <p>8 how --</p> <p>9 SPEAKER OF THE HOUSE: Representative</p> <p>10 Gilligan, can you answer that question? She asked a</p> <p>11 question if anyone has heard how the governor stands</p> <p>12 on --</p> <p>13 REPRESENTATIVE GILLIGAN: I have not</p> <p>14 spoken, I have not spoken to the governor about the</p> <p>15 legislation. I'm just looking at Senate Bill 29 that</p> <p>16 must have 30, 35 sponsors and there was no amendment.</p> <p>17 It was a perfectly good Bill that was introduced into</p> <p>18 the Senate. It passed the Senate. Now we come over</p> <p>19 here and there is amendments that's going to make it</p> <p>20 difficult to enact this into the law. What I'm asking</p> <p>21 is that this amendment be defeated and we go on and we</p> <p>22 approve the Bill.</p> <p>23 SPEAKER OF THE HOUSE: Representative, I'd</p> <p>24 like to remind you, sir, that the sponsor of the</p>	<p style="text-align: right;">Page 113</p> <p>1 of sovereign immunity and it is quite specific and quite</p> <p>2 all encompassing in that regard. And that this</p> <p>3 amendment - and I might correct the Speaker that this</p> <p>4 amendment that we're discussing was not written by</p> <p>5 Representative Hudson, it was written by Representative</p> <p>6 Lavelle.</p> <p>7 SPEAKER OF THE HOUSE: Absolutely. Let me</p> <p>8 correct you, sir. I said House Amendment number 3, the</p> <p>9 minority leader brought up the fact that we amended the</p> <p>10 Bill, and I said the House Amendment number 3 was mended</p> <p>11 by the prime sponsor of the Bill.</p> <p>12 REPRESENTATIVE KOWALKO: Yeah, but</p> <p>13 different amendment, different reasons.</p> <p>14 SPEAKER OF THE HOUSE: Right.</p> <p>15 REPRESENTATIVE KOWALKO: Yeah, but with all</p> <p>16 due respect, the firing of the ghost writer of the</p> <p>17 previous amendment is not distracting or it's changing</p> <p>18 the fact that Senate Bill 29 standing on its own has all</p> <p>19 of the protection that we need for a private --</p> <p>20 equalization for private, public entities and also does</p> <p>21 waive the sovereign immunity.</p> <p>22 SPEAKER OF THE HOUSE: Okay. Thank you,</p> <p>23 sir. Representative Viola was first and I have</p> <p>24 Representative Stone, Representative Wagner and I'll</p>

<p style="text-align: center;">Page 114</p> <p>1 save Representative Hudson for last if you don't mind.    2 Representative Viola.    3       REPRESENTATIVE VIOLA: Thank you,    4 Mr. Speaker. My only comment to Representative Lavelle    5 and Representative Valihura is I also listened to the    6 constitutional attorney and what I heard her say, not to    7 put words into her mouth, was -- or at least what I    8 thought I heard was very -- very deliberately to say    9 sovereign immunity should be dealt with on its own    10 merits in a separate piece of legislation. That's what    11 I heard. And somebody can correct me if I'm not wrong    12 but that's what I thought I heard. That it should be    13 dealt with in a separate piece of legislation.</p> <p>14       SPEAKER OF THE HOUSE: Representative    15 Lavelle, do you want to respond?</p> <p>16       REPRESENTATIVE LAVELLE: Open dialogue,    17 sure, sir.</p> <p>18       SPEAKER OF THE HOUSE: Yes.</p> <p>19       REPRESENTATIVE LAVELLE: Representative,    20 with all due respect to the constitutional scholar, she    21 doesn't get a vote. I do. We set the intent. We set    22 the legislation and that's what we're charged with    23 doing. We had a House attorney stand up and say that    24 you need the clarity. So, yeah, there is differences of</p>	<p style="text-align: center;">Page 116</p> <p>1 already has one amendment on it, it's Representative    2 Hudson's House Amendment number 3. I believe it will    3 have House Amendment number 5 on it in the next few    4 moments. It's going back to the Senate anyhow, and that    5 is why we have two chambers in this General Assembly    6 because it is with the actions of both chambers that we    7 are able to craft the best kind of legislation and the    8 best kind of public policy that we can possibly craft    9 for the citizens of Delaware. No Senator or    10 Representative has a monopoly on the ability to craft    11 good legislation. It is a -- it's teamwork and that's    12 what we're seeing here tonight.</p> <p>13       So I think that the surprise that I'm    14 hearing from some of my colleagues that a Representative    15 would dare to amend a Senate Bill is just very    16 disingenuous.</p> <p>17       SPEAKER OF THE HOUSE: I have    18 Representative Wagner, Representative Valihura, then    19 I'll go back to Representative Hudson, save you for    20 last.</p> <p>21       REPRESENTATIVE WAGNER: Thank you,    22 Mr. Speaker. I'm really trying to get my arms around,    23 you have -- some of the folks in this chamber have some    24 very difficult issues with this. I'm trying to get my</p>
<p style="text-align: center;">Page 115</p> <p>1 opinion. And we should provide clarity when we can    2 provide clarity. Representative, if this amendment were    3 to fail, which I don't believe it will, Mr. Speaker,    4 would you support changing sovereign and limited    5 immunity to essentially do this in a separate Bill this    6 year?</p> <p>7       REPRESENTATIVE VIOLA: I can't answer that    8 without seeing the piece of legislation and I think it    9 would be crazy for me to say yes or no.</p> <p>10       REPRESENTATIVE LAVELLE: Right in front of    11 you, sir.</p> <p>12       SPEAKER OF THE HOUSE: I have    13 Representative Stone, Representative Wagner,    14 Representative Hudson in that order. Open dialogue.</p> <p>15       REPRESENTATIVE STONE: Thank you,    16 Mr. Speaker. I am just rising because I'd like to make    17 a comment. I have heard a lot of people here talk about    18 this Bill, Senate Bill 29, and actually act kind of    19 surprised or incredulous that any member of the House of    20 Representatives would be amending it. That happens in    21 this chamber all the time. House Bills go to the    22 Senate. They get amended in the Senate. They come back    23 to us. Senate Bills come to this House chamber. We    24 amend them. We send them back to the Senate. This Bill</p>	<p style="text-align: center;">Page 117</p> <p>1 arms around it. I can't figure it out. And    2 Representative Kowalko and I can not figure it get this    3 figured out. So if I can ask Representative Gilligan,    4 because I have great respect for him, and we agree on    5 most things, basically most Bills we do, now if you can    6 simply help me out.</p> <p>7       I know that we all wanted a Bill passed    8 last year. This is a very serious issue, and I know    9 that we want to get a Bill passed this year and we agree    10 on that. I know we want to treat kids equally. Now, it    11 seems the discussion is between whether we already have    12 basic language that would cover the opposite of    13 sovereign immunity in the Bill or whether we need to say    14 in addition to the Bill we're going to do away with    15 sovereign immunity. So some folks here think it's    16 already covered in the Bill. Some folks are just saying    17 well, let's clarify it and put it in again.</p> <p>18       Now, I can understand a couple things. I    19 can understand if the fear is because sovereign immunity    20 is a very serious issue that we don't want to talk about    21 that unless it is a separate Bill. But that would be    22 the hold issue of sovereign immunity and not just as it    23 pertains to this very narrow usage of it. I    24 legitimately can understand and can appreciate if there</p>

30 (Pages 114 to 117)

<p style="text-align: right;">Page 118</p> <p>1 is concern and this was the only amendment that it might 2 hold up the Bill and it wouldn't get through because 3 we're towards the end of the session and we might not 4 get it done and we want to get this Bill passed this 5 time by the governor. 6 So if you can help me understand, and I'm 7 missing something here and I don't know what it is, why 8 people are opposed to approve this clarified language on 9 here because I know they want the Bill to pass and I 10 know they want kids treated the same way. Can you help 11 me? I don't understand.</p> <p>12 SPEAKER OF THE HOUSE: Representative 13 Gilligan.</p> <p>14 REPRESENTATIVE GILLIGAN: Thank you, 15 Mr. Speaker. No, I don't think I can help you. We 16 don't believe the amendment is necessary. We feel the 17 Bill speaks for itself and the Bill does what we want to 18 do. It takes both the private and the public sector.</p> <p>19 SPEAKER OF THE HOUSE: Representative 20 Valihura.</p> <p>21 REPRESENTATIVE WAGNER: I think that says a 22 lot. Thank you.</p> <p>23 SPEAKER OF THE HOUSE: Thank you. 24 Representative Valihura.</p>	<p style="text-align: right;">Page 120</p> <p>1 perfect world which amendment is your first choice, 2 number 2 or number 4?</p> <p>3 REPRESENTATIVE LAVELLE: Miss Hudson, they 4 both do the same thing. I don't want anyone to be 5 uncomfortable with the words or who may have crafted 6 those words, so we'll vote for number 4.</p> <p>7 REPRESENTATIVE HUDSON: Well, I'm not 8 uncomfortable. Let's set that straight. But I have a 9 couple questions because this seems very different. 10 Does this deal with simple negligence or gross 11 negligence?</p> <p>12 REPRESENTATIVE LAVELLE: Mr. Smith -- 13 Mr. Speaker, may I have personal privileges from the 14 floor?</p> <p>15 SPEAKER OF THE HOUSE: Yes, without 16 objections.</p> <p>17 REPRESENTATIVE LAVELLE: I'm not an 18 attorney so I'll defer to Mr. Smith.</p> <p>19 REPRESENTATIVE HUDSON: Well, I would 20 wonder what the goal of the Bill was, simple negligence 21 or gross negligence.</p> <p>22 REPRESENTATIVE LAVELLE: Excellent question 23 Representative. It is my understanding that the goal of 24 the Bill is gross negligence. It is my understanding</p>
<p style="text-align: right;">Page 119</p> <p>1 REPRESENTATIVE VALIHURA: Let me make this 2 very clear. I have been inside the courtroom. I have, 3 indeed, made this argument myself. I have had the 4 argument made against me. The fact that your 5 legislation fails, your amendment fails, will be used 6 against you in this setting, and this setting would be 7 that when the issue comes before the court as to whether 8 or not sovereign immunity has been waived, the lawyer 9 will argue they didn't pass the amendment and therefore 10 sovereign immunity hasn't been waived. Don't kid 11 yourselves here, ladies and gentlemen, if you don't vote 12 for, this amendment sovereign immunity will not be 13 waived. Every argument that has been made today will 14 fail. Thank you.</p> <p>15 SPEAKER OF THE HOUSE: Representative 16 Hudson, thank you for your patience.</p> <p>17 REPRESENTATIVE HUDSON: Thank you. But if 18 gross negligence is the standard, then that's very 19 clear. Child sexual abuse -- child sexual abuse is a 20 gross negligent act and therefore it is covered.</p> <p>21 My other point was to Mr. Lavelle, could I 22 have open dialogue with him for a moment?</p> <p>23 SPEAKER OF THE HOUSE: Yes.</p> <p>24 REPRESENTATIVE HUDSON: Mr. Lavelle, in a</p>	<p style="text-align: right;">Page 121</p> <p>1 that with the amendment that standard does not change. 2 It is my understanding that with the amendment gross 3 negligence becomes the standard, we set the standard, we 4 apply the standard, and we live by the standard. Gross 5 negligence, Mr. Smith, you can correct me if I'm wrong 6 in my understanding.</p> <p>7 MR. RON SMITH: Line 15 of the Bill itself 8 still is in the Bill with the amendment and it would 9 still require a finding of gross negligence on the legal 10 entity.</p> <p>11 REPRESENTATIVE HUDSON: Okay. Mr. -- 12 Mr. Speaker, may I speak to Mr. Smith now?</p> <p>13 SPEAKER OF THE HOUSE: Yes, you may.</p> <p>14 REPRESENTATIVE HUDSON: Okay. Line number 15 five in the amendment, what is a political subdivision 16 of the State?</p> <p>17 MR. RON SMITH: That would be counties, 18 municipalities, things of that nature.</p> <p>19 REPRESENTATIVE HUDSON: Like -- okay. Was 20 that what you intended, Mr. Lavelle?</p> <p>21 REPRESENTATIVE LAVELLE: Yes, this is the 22 language from last year from House Substitute 1 to House 23 Bill 450.</p> <p>24 REPRESENTATIVE HUDSON: And you said,</p>

<p style="text-align: right;">Page 122</p> <p>1 Mr. Lavelle, that this amendment costs nothing? You    2 just said that. I quoted you when you said it. But    3 wasn't this amendment the one that does have an    4 increased cost?</p> <p>5 REPRESENTATIVE LABELLE: Excellent    6 question, Representative. There was no fiscal note    7 applied to House Substitute 1 to House Bill 450 last    8 year. No fiscal note was ever filed with it. I can    9 only assume, as to all these rumors that we had heard,    10 and I heard them as well, turned out to be just that.    11 There were no rumors, so there is no costs.</p> <p>12 REPRESENTATIVE HUDSON: Okay.</p> <p>13 REPRESENTATIVE LABELLE: But cost is not a    14 concern to me, ma'am. I know it's a concern to some. I    15 have never been in a camp that said cost is a concern.    16 We're not -- we're not asking Boys and Girls Clubs,    17 clearly cost is a concern to them. Cost to the State is    18 not a concern to them. No cost is a concern to me. No    19 fiscal note was filed on the bill last year, therefore I    20 can assume there is no additional costs to the    21 additional costs to State. Any suits would be paid for    22 out of the self insurance fund, I believe, and/or    23 general funds.</p> <p>24 UNIDENTIFIED REPRESENTATIVE: I heard no</p>	<p style="text-align: right;">Page 124</p> <p>1 Mr. Speaker, the reason why I stood up was actually    2 because I stood up a long time ago, if you remember.    3 SPEAKER OF THE HOUSE: Yes.</p> <p>4 REPRESENTATIVE HUDSON: I thought it might    5 be a nice idea that since this is a new amendment that    6 perhaps we ought to bring up the attorney who wrote    7 Senate Bill 29 and see if this fits in with the goal and    8 if it -- if there is anything that he might want to add,    9 no offense to Mr. Smith, I talked to him all afternoon    10 about it, but I just think to be thorough it would be    11 important to bring up Mr. Jeff Clark.</p> <p>12 SPEAKER OF THE HOUSE: Without objection so    13 ordered.</p> <p>14 MR. JEFF CLARK: Jeff Clark, Senate    15 attorney.</p> <p>16 SPEAKER OF THE HOUSE: Representative    17 Hudson.</p> <p>18 REPRESENTATIVE HUDSON: Have you read    19 Senate Amendment number 4?</p> <p>20 MR. JEFF CLARK: Yes, I have, ma'am, I have    21 to say I have listened to a good bit of the debate. To    22 be clear, Senate Bill 29 is a statute of limitations    23 Bill. The Bill does not change the status quo as it's    24 written with regard to sovereign immunity. Sovereign</p>
<p style="text-align: right;">Page 123</p> <p>1 suits were filed.</p> <p>2 REPRESENTATIVE LABELLE: I'm sure we have    3 done the right thing.</p> <p>4 REPRESENTATIVE HUDSON: Back to Mr. Smith,    5 may I ask him another question?</p> <p>6 SPEAKER OF THE HOUSE: Yes. You may    7 continue.</p> <p>8 REPRESENTATIVE HUDSON: Mr. Smith, you had    9 Mr. Lavelle do an amendment to Amendment 2 because the    10 word Constitution was there improperly. Is it properly    11 listed in House Amendment number 4?</p> <p>12 MR. RON SMITH: This legislation is not an    13 amendment to the Constitution.</p> <p>14 REPRESENTATIVE HUDSON: Okay.</p> <p>15 MR. RON SMITH: It can't do that and the    16 inference from the way House Amendment number 2 was    17 originally written it was saying it was overriding the    18 Constitution itself.</p> <p>19 REPRESENTATIVE HUDSON: Right.</p> <p>20 MR. RON SMITH: Now there are provisions    21 that sovereign immunity can be waived if - and there is    22 case law on it - if the General Assembly expresses its    23 intent to do that.</p> <p>24 REPRESENTATIVE HUDSON: Thank you.</p>	<p style="text-align: right;">Page 125</p> <p>1 immunity is a defense as statute of limitations is a    2 defense. When a complaint is filed and a defendant    3 files an answer they're free to plead statute of    4 limitations as a defense. The State under the status    5 quo can plead sovereign immunity and qualified immunity    6 to the extent it applies, just as a private entity could    7 plead bankruptcy as a defense which would not --    8 obviously would not apply to the State. It's really    9 apples and oranges the type of situation.</p> <p>10 With regard to Senate -- or House amendment    11 number 4, to be clear and so the chamber -- I mean so    12 the General Assembly understands what it's doing with    13 this, this would make a simple negligent standard the    14 same type of standard that someone would be sued for if    15 they rear ended another automobile at a traffic light    16 apply to the State going forward across the board for    17 any of the enumerated sexual offenses that are listed in    18 this Bill. That is a very broad brush to apply in a    19 case like this. I mean ultimately that has to be a    20 policy call as to whether this Bill is converted from a    21 statute of limitations Bill to also cover sovereign    22 immunity. Again, that is as a policy call.</p> <p>23 Either -- one other comment, and as I have    24 looked through House Amendment number 4 is it waives all</p>

1 of the immunity provisions of Chapter 40 in the title --  
 2 of Chapter 40 in this title and that would include, for  
 3 instance, taking off the cap of \$300,000 and that's for  
 4 as a policy decision for this chamber to make as it  
 5 would be for the Senate as to what effect that would  
 6 have with different groups that are affected by that, if  
 7 that were to happen. That's why I -- I can not  
 8 emphasize enough that it is an apples and oranges  
 9 situation.

10 This is a -- Senate Bill 29 is a statute of  
 11 limitations Bill. It's a statute of limitations Bill  
 12 and perhaps some of the confusion has come into play  
 13 here because this statute of limitations Bill gives  
 14 sovereign immunity-like protection to private entities  
 15 during the look-back provision. It's a statute of  
 16 limitations Bill that gives that extra protection during  
 17 the look-back provision to private entities. And  
 18 that's --

19 REPRESENTATIVE HUDSON: Are you saying  
 20 maybe that the content of House Amendment 4 doesn't even  
 21 fit under the title of Senate Bill 29?

22 MR. JEFF CLARK: No, Senator, I can't give  
 23 you -- Representative, I'm used to talking to Senators.  
 24 I apologize. No, it would fit within the scope of the

1 MR. JEFF CLARK: I was in the military  
 2 before so I'm well conditioned to say sir and well  
 3 conditioned to say senators when I respond to folks  
 4 here. Representative, as far as the Bill is clear on  
 5 its face that it is a statute of limitations Bill that  
 6 neither adds to, nor takes away, from the status quo  
 7 with regard to sovereign immunity and qualified  
 8 immunity. That is a separate defense of the laundry  
 9 list and as you would well know, Representative, in  
 10 filing an answer, the defendant would do in a case they  
 11 would list a laundry list of defenses, and statute of  
 12 limitations would be one, sovereign immunity would be  
 13 another, qualified immunity would be another defense,  
 14 and the Bill does not change that. I mean, the State  
 15 would be subject to suit if qualified immunity did not  
 16 apply otherwise. So really it's not -- the Bill is  
 17 quite clear with what it does.

18 REPRESENTATIVE VALIHURA: Well, I  
 19 appreciate your view, but we have a difference of  
 20 opinion in the chamber, and we have a difference of  
 21 intention of the Bill. I also believe that these are  
 22 two defenses, are they not, sovereign immunity and  
 23 statute of limitations?

24 MR. JEFF CLARK: They are two separate

1 Bill.

2 REPRESENTATIVE HUDSON: Okay. I wasn't  
 3 sure how far you were going with that. All right.  
 4 Let's see, what else do I want to ask. Well, maybe  
 5 someone else has a question.

6 SPEAKER OF THE HOUSE: I think  
 7 Representative Valihura, questions of the witness?

8 REPRESENTATIVE VALIHURA: Yes. Thank you,  
 9 Mr. Clark, for being here this evening. Mr. Clark, tell  
 10 me can you add some clarity as the draftsperson of this  
 11 legislation as to whether or not there was an intent to  
 12 waive sovereign immunity in the Bill?

13 MR. JEFF CLARK: Senator, on the face of  
 14 the Bill --

15 REPRESENTATIVE VALIHURA: I'm not there  
 16 yet. You'll have to bear with me. Maybe a couple of  
 17 years I'll be a Senator but I'm still a Representative.

18 MR. JEFF CLARK: I'm sorry, sir.

19 SPEAKER OF THE HOUSE: He did like that.

20 MR. JEFF CLARK: I'm sorry, sir. I'm  
 21 sorry. I apologize.

22 SPEAKER OF THE HOUSE: He did like that.

23 REPRESENTATIVE VALIHURA: I did like, I  
 24 must say it did sound pretty good.

1 defenses.

2 REPRESENTATIVE VALIHURA: And is there any  
 3 legal reason why we can't include defenses in a Bill?

4 MR. JEFF CLARK: No, sir, there would be no  
 5 legal impediment. It would be a policy decision.

6 REPRESENTATIVE VALIHURA: I'm sorry.

7 MR. JEFF CLARK: It would be a policy  
 8 decision as to whether that --

9 REPRESENTATIVE VALIHURA: Right. That  
 10 would be a policy decision as to whether we wanted to do  
 11 that, right. That's your understanding?

12 MR. JEFF CLARK: That would be correct,  
 13 sir.

14 REPRESENTATIVE VALIHURA: Very well. Thank  
 15 you.

16 SPEAKER OF THE HOUSE: Before we go back to  
 17 Representative Wagner, Representative Schwartzkopf, did  
 18 you have any -- okay. Representative Maier for the  
 19 witness, then I have Representative Short, Brian Short  
 20 so --

21 REPRESENTATIVE MAIER: Yes, please. Thank  
 22 you. Mr. Speaker --

23 SPEAKER OF THE HOUSE: Open dialogue with  
 24 the witness, yes.

<p style="text-align: right;">Page 130</p> <p>1 REPRESENTATIVE MAIER: All right.    2 Mr. Clark, could you give your opinion as to whether    3 Representative Lavelle's amendment would provide clarity    4 to a court? That seems to be kind of a point that needs    5 to be --</p> <p>6 MR. JEFF CLARK: That's correct,    7 Representative. It would provide clarity for a court    8 that the General Assembly intends the State to be    9 subject to suit for simple negligence. That's a simple    10 deviation from the ordinary standard of care, which is    11 much different than the liability that the State faces    12 now for wrongful death cases. It would be a different    13 standard from a wrongful death case that was caused by a    14 State employee. It would be a different standard for    15 personal injury cases. It would carve out an exception    16 and that certainly it calls for a lot of different    17 policy considerations in my opinion.</p> <p>18 REPRESENTATIVE MAIER: So also in your    19 opinion you might think that should we go through this    20 door it might open the door to have this apply to    21 wrongful death in other areas, is that correct?</p> <p>22 MR. JEFF CLARK: It would, Representative.    23 It would open the door in a lot of regards. I mean,    24 with regard to -- for instance, now municipalities have</p>	<p style="text-align: right;">Page 132</p> <p>1 to be found liable in that regard.    2 REPRESENTATIVE MAIER: So it lowers the    3 level?</p> <p>4 MR. JEFF CLARK: Yes. Yes, ma'am.    5 REPRESENTATIVE MAIER: Okay. Thank you.    6 SPEAKER OF THE HOUSE: I have Brian --    7 Representative Short, I'm sorry, you have a question for    8 the --</p> <p>9 REPRESENTATIVE BRIAN SHORT: Thank you,    10 Mr. Speaker. Not being a lawyer, a quick question for    11 you. Representative Lavelle is very interested in    12 creating equality between the public sector and the    13 non-public sector. Does the non-public sector enjoy    14 defenses that the public sector cannot enjoy?</p> <p>15 MR. JEFF CLARK: Bankruptcy is the first    16 one that comes to mind, Representative.</p> <p>17 REPRESENTATIVE SHORT: I was just trying to    18 establish whether, in fact, we can create a level    19 playing field.</p> <p>20 SPEAKER OF THE HOUSE: Representative    21 Marshall, comments or questions for the witness? Anyone    22 else have questions or comments for the witness?</p> <p>23 Representative Wagner, thank you.</p> <p>24 REPRESENTATIVE WAGNER: Thank you. Okay.</p>
<p style="text-align: right;">Page 131</p> <p>1 their liability and the General Assembly has spoken,    2 said their liabilities cap at \$300,000. And this -- it    3 would take that away. So what would be the effect of    4 insurance policies if municipalities had gone out and    5 purchased, if you go down this road and you open up this    6 can of worms and you address these additional policy    7 issues.</p> <p>8 REPRESENTATIVE MAIER: And the State's cap,    9 we don't have one?</p> <p>10 MR. JEFF CLARK: The 300,000 dollar cap    11 with regard to that is in the County Municipal Court    12 Claims Act which would be waived under this amendment as    13 would be the --</p> <p>14 REPRESENTATIVE MAIER: And school    15 districts, how would it impact them?</p> <p>16 MR. JEFF CLARK: It would keep -- make the    17 school districts - and this is going forward - it would    18 make school districts liable for simple negligence,    19 simple -- negligently hiring employees, for not    20 investigating them properly and just merely exceeding    21 the ordinary standard of care in that. It would hold    22 them liable for negligently supervising its employees    23 which under current law now it would have to be -- they    24 would have to be found to be grossly negligent in order</p>	<p style="text-align: right;">Page 133</p> <p>1 This will be quick. Representative Valihura said    2 something, I want to see if I understood it correctly.    3 You can help me. We have now spent a great deal of time    4 talking about the issue of sovereign immunity. If we    5 defeat this amendment then when a court case comes up    6 can an attorney go to the discussion of this Bill and    7 say that it was not legislative intent to have sovereign    8 immunity because we defeated the amendment?</p> <p>9 MR. JEFF CLARK: Representative, it's my    10 opinion that if this amendment does not get added to the    11 Bill that will not become an issue. The issue -- the    12 Bill will stay merely a statute of limitations Bill that    13 qualified immunity analysis, that sovereign immunity    14 analysis will continue just as it does now if an action    15 happened a year ago. It will be treated the same way.    16 The public entities will be subject to lawsuit in the    17 same way.</p> <p>18 REPRESENTATIVE WAGNER: But you don't think    19 an attorney -- if we had not had that discussion, this    20 discussion, if it passes, then I understand. If it    21 doesn't pass now because we spent a lot of time and we    22 may end up saying we do not think based on this vote    23 that there should be limited sovereign.</p> <p>24 MR. JEFF CLARK: Representative, it goes</p>

1 back to how do you frame the issue, how do you frame  
 2 what you want to do with this Bill. And if this is a  
 3 statute of limitations Bill, this statute of limitations  
 4 Bill applies to public entities. It applies to private  
 5 entities. It applies to the State. It applies to  
 6 individuals as a statute of limitations Bill, which is  
 7 exactly what this is.

8 REPRESENTATIVE WAGNER: Thank you.

9 SPEAKER OF THE HOUSE: Any other questions  
 10 for the witness? You may be excused. I have  
 11 Representative Schwartzkopf, he's been very patient,  
 12 thank you, Representative Marshall in that order and  
 13 I'll go back to Representative Hudson. Representative  
 14 Schwartzkopf, open dialogue.

15 REPRESENTATIVE SCHWARTZKOPF: Thank you,  
 16 Mr. Speaker. I have a comment or statement I'd like to  
 17 make. I'm pretty much in a pickle here. I had a very  
 18 nice conversation with the sponsor of the amendment the  
 19 other day about the protection of all of our children  
 20 and I agree with that. And I gave my word that day that  
 21 I would support the amendment as long as I felt it would  
 22 not be jeopardized getting back to the Senate. I still  
 23 feel that way. I stand here today - Greg, I have to  
 24 apologize to you publicly, I have to have retract my

1 to protect these kids to offer them the look-back and  
 2 the moving forward.

3 I don't know, I mean I heard Representative  
 4 Valihura say tell me a reason why we shouldn't do this  
 5 and this is one of the reasons I think. I think what we  
 6 have done is we have taken a second huge, huge, huge  
 7 policy issue and stuck it on a Bill that we -- I think  
 8 both Houses agree with on the statute of limitations. I  
 9 think if it was just that it would be through in no  
 10 problems. But I think now with the second issue  
 11 attached I think it will come out of here but I don't  
 12 think it will come out of there, and I really have some  
 13 concerns that we're going to end up on June 30th with  
 14 nothing again and these people up here will not stand  
 15 for that and they shouldn't stand for that.

16 SPEAKER OF THE HOUSE: Thank you,  
 17 Representative. Representative Marshall. Okay. Any  
 18 other comments? Representative Lavelle, you have an  
 19 amendment before us. Representative Hudson.

20 REPRESENTATIVE HUDSON: Yes, before  
 21 Representative Lavelle speaks I would just say that I  
 22 regard this as an unfriendly amendment and I think  
 23 Representative Schwartzkopf was eloquent in expressing a  
 24 lot about what I feel. I'm a compromiser, but I feel

1 support, not for the passage of your amendment, but I  
 2 don't feel that this Bill will stand a very good chance  
 3 of getting back through the Senate. And the reason I  
 4 say that is because the Senate has not had any debate  
 5 yet whatsoever about sovereign immunity.

6 We're talking about two separate policy  
 7 issues here. We're talking about statutes of  
 8 limitations that was debated for hours in the Senate.  
 9 And it comes over here and we're doing exactly what  
 10 Representative Stone said we have every right to do, and  
 11 that is amend the Bill and change it, do whatever we  
 12 want, and that's what we can do. But these people here  
 13 today want a Bill passed before we leave here and that  
 14 Bill is to protect our children, and it's to look back  
 15 and to look forward. And that's what Senate Bill 29  
 16 does.

17 I'm afraid that if we attach this  
 18 amendment, Greg, I'm afraid that we would not end up  
 19 with a Bill. I offer you my support to take this away,  
 20 come back with a separate Bill, I'll sign on to it with  
 21 you. I'm just afraid that if we take the sovereign  
 22 immunity debate and put it back in the Senate that's  
 23 where it's going to stay. We're not going to have the  
 24 time to get it back through and we will not have a Bill

1 that the sovereign immunity is in the Bill, I would say  
 2 that State employees if they conduct gross negligence  
 3 they are free to be sued, that's what I need to know.  
 4 The lawyers have said that's true. I feel comfortable  
 5 to know that someone that conducts child sexual abuse  
 6 will be recognized as doing something grossly negligent  
 7 by our State and I think that our courts would agree  
 8 with that. So I feel that this amendment is very  
 9 unfriendly and I would just ask for my colleagues to  
 10 vote no on this.

11 SPEAKER OF THE HOUSE: Representative  
 12 Lavelle.

13 REPRESENTATIVE LAVELLE: Thank you, Mr.  
 14 Speaker. Thank you, Representative Schwartzkopf. I  
 15 appreciate your candor. The status quo is not  
 16 acceptable. We have heard that. Children get abused.  
 17 We have heard that. Institutions hide the abuser. We  
 18 have heard that. We are not free from all those  
 19 afflictions. It is our responsibility, first and  
 20 foremost, to care for their -- our children, all of our  
 21 children. How many children could theoretically be  
 22 abused between now and when we fix this at some point in  
 23 the future? The Senate wrestled last year with the  
 24 issue of sovereign and limited immunity. It has always

<p style="text-align: right;">Page 138</p> <p>1 been my intent to protect all of our children,    2 Mr. Speaker. I stand for our victims, all our victims,    3 Mr. Speaker. Let us set the standard and live by it.    4 Set the standard and live by it. No special treatment    5 for the State.</p> <p>6 Representative Hudson, you're right, a    7 teacher could be sued, the district that hides or    8 enables that teacher cannot without this amendment. Let    9 us lead the nation in this issue. Let us be the first    10 state in the country to raise sovereign and limited    11 immunity and say we stand for everyone. Let's not    12 differentiate between victims based on their employers.    13 Let us protect all children, including the 120,000    14 children who go to our public schools every day,    15 Mr. Speaker. Let us stand for all victims, Mr. Speaker.    16 Roll call on the amendment.</p> <p>17 SPEAKER OF THE HOUSE: Madam Chief Clerk,    18 please call the roll on House Amendment number 4 to    19 Senate Bill 29.</p> <p>20 MADAM CHIEF CLERK: You have Pam Maier with    21 her hand up.</p> <p>22 SPEAKER OF THE HOUSE: Oh, I'm sorry.    23 Representative Maier, you had your hand up before the    24 roll call?</p>	<p style="text-align: right;">Page 140</p> <p>1 special protection. I have a special needs child. You    2 know, he's representative of all of these children,    3 Representative. I'm sorry, I can't amend Bills in the    4 Senate.</p> <p>5 REPRESENTATIVE MAIER: Thank you.</p> <p>6 REPRESENTATIVE LAVELLE: Thank you. Call    7 the roll, Mr. Speaker.</p> <p>8 SPEAKER OF THE HOUSE: Madam Chief Clerk,    9 please call the roll on House Amendment number 4 to    10 Senate Bill 29.</p> <p>11 MADAM CHIEF CLERK: Mr. Blakey.</p> <p>12 REPRESENTATIVE BLKEY: Yes.</p> <p>13 MADAM CHIEF CLERK: Mr. Blakey yes.</p> <p>14 Mr. Booth.</p> <p>15 REPRESENTATIVE BOOTH: Yes.</p> <p>16 MADAM CHIEF CLERK: Mr. Booth yes.</p> <p>17 Mr. Brady.</p> <p>18 REPRESENTATIVE BRADY: No.</p> <p>19 MADAM CHIEF CLERK: Mr. Brady no.</p> <p>20 Mr. Carey.</p> <p>21 REPRESENTATIVE CAREY: Yes.</p> <p>22 MADAM CHIEF CLERK: Mr. Carey yes. Mr.    23 Cathcart.</p> <p>24 REPRESENTATIVE CATHCART: Yes.</p>
<p style="text-align: right;">Page 139</p> <p>1 REPRESENTATIVE MAIER: If you don't mind, I    2 just, I have a question to Representative Lavelle. Did    3 you attempt to get this amended in the Senate? Did you    4 attempt to have this language worked prior to it coming    5 to the House?</p> <p>6 REPRESENTATIVE LAVELLE: No,    7 Representative, I'm unable to amend Bills that are in    8 the Senate. I was with -- I have always operated under    9 the understanding that the State would be held equally    10 responsible. We have HS 1 to HB 450 from last year that    11 dealt with this issue. I can't amend Bills in the    12 Senate. I can't control the Senate any more than you    13 can, Representative.</p> <p>14 REPRESENTATIVE MAIER: But I would think    15 that if it was really important to you, you would not    16 have gone to a Senator and asked them to put it on    17 the -- I mean I'm just wondering, you know, about --</p> <p>18 REPRESENTATIVE LAVELLE: I appreciate your    19 concerns, Senator -- I mean Representative, I'm sorry.    20 Again, we're talking about all children, not some    21 children. We're talking about my child, my children,    22 one goes to a public, one goes to a private, even the    23 priest lawyer said before that if it was a special needs    24 student maybe they would deserve more protection,</p>	<p style="text-align: right;">Page 141</p> <p>1 MADAM CHIEF CLERK: Mr. Cathcart yes.</p> <p>2 Mr. Ennis.</p> <p>3 REPRESENTATIVE ENNIS: No.</p> <p>4 MADAM CHIEF CLERK: Mr. Ennis no.</p> <p>5 Mr. Ewing.</p> <p>6 REPRESENTATIVE EWING: No.</p> <p>7 MADAM CHIEF CLERK: Mr. Ewing no.</p> <p>8 Mr. Gilligan.</p> <p>9 REPRESENTATIVE GILLIGAN: No.</p> <p>10 MADAM CHIEF CLERK: Mr. Gilligan no.</p> <p>11 Mrs. Hall-Long.</p> <p>12 REPRESENTATIVE HALL-LONG: No.</p> <p>13 MADAM CHIEF CLERK: Mrs. Hall-Long no.</p> <p>14 Mr. Hastings.</p> <p>15 REPRESENTATIVE HASTINGS: Yes.</p> <p>16 MADAM CHIEF CLERK: Mr. Hastings yes.</p> <p>17 Mr. Hocker.</p> <p>18 REPRESENTATIVE HOCKER: No.</p> <p>19 MADAM CHIEF CLERK: Mr. Hocker no. Miss    20 Hudson.</p> <p>21 REPRESENTATIVE HUDSON: No.</p> <p>22 MADAM CHIEF CLERK: Miss Hudson no.</p> <p>23 Mr. Johnson.</p> <p>24 REPRESENTATIVE JOHNSON: No.</p>

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1	MADAM CHIEF CLERK: Mr. Johnson no.	1	MADAM CHIEF CLERK: Mrs. Plant no.
2	Miss Keeley.	2	Mrs. Schooley.
3	REPRESENTATIVE KEELEY: No.	3	REPRESENTATIVE SCHOOLEY: No.
4	MADAM CHIEF CLERK: Miss Keeley no.	4	MADAM CHIEF CLERK: Mrs. Schooley no.
5	Mr. Kowalko.	5	Mr. Schwartzkopf.
6	REPRESENTATIVE KOWALKO: No.	6	REPRESENTATIVE SCHWARTZKOPF: No.
7	MADAM CHIEF CLERK: Mr. Kowalko no. Mr.	7	MADAM CHIEF CLERK: Mr. Schwartzkopf no.
8	Lavelle.	8	Mr. B. Short.
9	REPRESENTATIVE LAVELLE: Yes.	9	REPRESENTATIVE B. SHORT: No.
10	MADAM CHIEF CLERK: Mr. Lavelle yes.	10	MADAM CHIEF CLERK: Mr. B. Short no. Mr.
11	Mr. Lee.	11	D. Short.
12	REPRESENTATIVE LEE: Yes.	12	REPRESENTATIVE D. SHORT: Yes.
13	MADAM CHIEF CLERK: Mr. Lee yes.	13	MADAM CHIEF CLERK: Mr. D. Short yes.
14	Mr. Lofink.	14	Mrs. Stone.
15	REPRESENTATIVE LOFINK: No.	15	REPRESENTATIVE STONE: Yes.
16	MADAM CHIEF CLERK: Mr. Lofink no.	16	MADAM CHIEF CLERK: Mrs. Stone yes.
17	Mrs. Longhurst.	17	Mrs. Thornburg.
18	REPRESENTATIVE LONGHURST: No.	18	REPRESENTATIVE THORNBURG: Yes.
19	MADAM CHIEF CLERK: Mrs. Longhurst no.	19	MADAM CHIEF CLERK: Mrs. Thornburg yes.
20	Mrs. Maier.	20	Mr. Valihura.
21	REPRESENTATIVE MAIER: No.	21	REPRESENTATIVE VALIHURA: Yes.
22	MADAM CHIEF CLERK: Mrs. Maier no.	22	MADAM CHIEF CLERK: Mr. Valihura yes.
23	Mr. Manolakos.	23	Mr. Viola.
24	REPRESENTATIVE MANOLAKOS: Yes.	24	REPRESENTATIVE VIOLA: No.
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1	MADAM CHIEF CLERK: Mr. Manolakos yes.	1	MADAM CHIEF CLERK: Mr. Viola no.
2	Mrs. Marshall.	2	Mrs. Wagner.
3	REPRESENTATIVE MARSHALL: Yes.	3	REPRESENTATIVE WAGNER: Yes.
4	MADAM CHIEF CLERK: Mrs. Marshall yes.	4	MADAM CHIEF CLERK: Mrs. Wagner yes.
5	Mrs. McWilliams.	5	Mr. Walls.
6	REPRESENTATIVE McWILLIAMS: No.	6	REPRESENTATIVE WALLS: No.
7	MADAM CHIEF CLERK: Mrs. McWilliams no.	7	MADAM CHIEF CLERK: Mr. Walls no.
8	Mr. Miro.	8	Mr. Williams.
9	REPRESENTATIVE MIRO: No.	9	REPRESENTATIVE WILLIAMS: No.
10	MADAM CHIEF CLERK: Mr. Miro no.	10	MADAM CHIEF CLERK: Mr. Williams no.
11	Mr. Mitchell.	11	Mr. Speaker.
12	REPRESENTATIVE MITCHELL: No.	12	SPEAKER OF THE HOUSE: Yes.
13	MADAM CHIEF CLERK: Mr. Mitchell no.	13	MADAM CHIEF CLERK: Mr. Speaker yes.
14	Mr. Mulrooney.	14	SPEAKER OF THE HOUSE: Representative
15	REPRESENTATIVE MULROONEY: No.	15	Lavelle.
16	MADAM CHIEF CLERK: Mr. Mulrooney no.	16	REPRESENTATIVE LAVELLE: How am I voting,
17	Mr. Oberle.	17	Madam Chief Clerk?
18	REPRESENTATIVE OBERLE: Yes.	18	MADAM CHIEF CLERK: Mr. Lavelle recorded
19	MADAM CHIEF CLERK: Mr. Oberle yes.	19	yes.
20	Mr. Outten.	20	REPRESENTATIVE LAVELLE: Yes.
21	REPRESENTATIVE OUTTEN: No.	21	SPEAKER OF THE HOUSE: Representative
22	MADAM CHIEF CLERK: Mr. Outten no.	22	Maier.
23	Mrs. Plant.	23	REPRESENTATIVE MAIER: I believe I heard
24	REPRESENTATIVE PLANT: No.	24	the chief clerk say I voted no. I actually went not

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1	voting, but I vote a yes.	1	MADAM CHIEF CLERK: Mr. Johnson.
2	MADAM CHIEF CLERK: Mrs. Maier from not	2	REPRESENTATIVE JOHNSON: Yes.
3	voting to yes.	3	MADAM CHIEF CLERK: Mr. Johnson yes. Miss
4	Mr. Speaker, the roll call reveals 17 yes,	4	Keeley.
5	24 no.	5	REPRESENTATIVE KEELEY: Yes.
6	SPEAKER OF THE HOUSE: Not having received	6	MADAM CHIEF CLERK: Miss Keeley yes.
7	this constitution majority vote, House Amendment number	7	Mr. Kowalko.
8	4 to Senate Bill 29 declared defeated.	8	REPRESENTATIVE KOWALKO: Yes.
9	Representative Hudson.	9	MADAM CHIEF CLERK: Mr. Kowalko yes. Mr.
10	REPRESENTATIVE HUDSON: Roll call.	10	Lavelle.
11	SPEAKER OF THE HOUSE: Madam Chief Clerk,	11	REPRESENTATIVE LAVELLE: Not voting.
12	please call the roll on Senate Bill 29 with House	12	MADAM CHIEF CLERK: Mr. Lavelle not voting.
13	Amendment number 3.	13	Mr. Lee.
14	MADAM CHIEF CLERK: Mr. Blakey.	14	REPRESENTATIVE LEE: Yes.
15	REPRESENTATIVE BLAKEY: Yes.	15	MADAM CHIEF CLERK: Mr. Lee yes.
16	MADAM CHIEF CLERK: Mr. Blakey yes.	16	Mr. Lofink.
17	Mr. Booth.	17	REPRESENTATIVE LOFINK: Yes.
18	REPRESENTATIVE BOOTH: Yes.	18	MADAM CHIEF CLERK: Mr. Lofink yes.
19	MADAM CHIEF CLERK: Mr. Booth yes.	19	Mrs. Longhurst.
20	Mr. Brady.	20	REPRESENTATIVE LONGHURST: Yes.
21	REPRESENTATIVE BRADY: Yes.	21	MADAM CHIEF CLERK: Mrs. Longhurst yes.
22	MADAM CHIEF CLERK: Mr. Brady yes.	22	Mrs. Maier.
23	Mr. Carey.	23	REPRESENTATIVE MAIER: Yes.
24	REPRESENTATIVE CAREY: Yes.	24	MADAM CHIEF CLERK: Mrs. Maier yes.
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1	MADAM CHIEF CLERK: Mr. Carey yes. Mr.	1	Mr. Manolakos.
2	Cathcart.	2	REPRESENTATIVE MANOLAKOS: Yes.
3	REPRESENTATIVE CATHCART: Yes.	3	MADAM CHIEF CLERK: Mr. Manolakos yes.
4	MADAM CHIEF CLERK: Mr. Cathcart yes.	4	Mrs. Marshall.
5	Mr. Ennis.	5	REPRESENTATIVE MARSHALL: Yes.
6	REPRESENTATIVE ENNIS: Yes.	6	MADAM CHIEF CLERK: Mrs. Marshall yes.
7	MADAM CHIEF CLERK: Mr. Ennis yes.	7	Mrs. McWilliams.
8	Mr. Ewing.	8	REPRESENTATIVE McWILLIAMS: Yes.
9	REPRESENTATIVE EWING: Yes.	9	MADAM CHIEF CLERK: Mrs. McWilliams yes.
10	MADAM CHIEF CLERK: Mr. Ewing yes.	10	Mr. Miro.
11	Mr. Gilligan.	11	REPRESENTATIVE MIRO: Yes.
12	REPRESENTATIVE GILLIGAN: Yes.	12	MADAM CHIEF CLERK: Mr. Miro yes.
13	MADAM CHIEF CLERK: Mr. Gilligan yes.	13	Mr. Mitchell.
14	Mrs. Hall-Long.	14	REPRESENTATIVE MITCHELL: Yes.
15	REPRESENTATIVE HALL-LONG: Yes.	15	MADAM CHIEF CLERK: Mr. Mitchell yes.
16	MADAM CHIEF CLERK: Mrs. Hall-Long yes.	16	Mr. Mulrooney.
17	Mr. Hastings.	17	REPRESENTATIVE MULROONEY: Yes.
18	REPRESENTATIVE HASTINGS: Yes.	18	MADAM CHIEF CLERK: Mr. Mulrooney yes.
19	MADAM CHIEF CLERK: Mr. Hastings yes. Mr.	19	Mr. Oberle.
20	Hocker.	20	REPRESENTATIVE OBERLE: Yes.
21	REPRESENTATIVE HOCKER: Yes.	21	MADAM CHIEF CLERK: Mr. Oberle yes.
22	MADAM CHIEF CLERK: Mr. Hocker yes. Miss	22	Mr. Outten.
23	Hudson.	23	REPRESENTATIVE OUTTEN: Yes.
24	REPRESENTATIVE HUDSON: Yes.	24	MADAM CHIEF CLERK: Mr. Outten yes.

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1	Mrs. Plant.	1 call reveals 41 yes.
2	REPRESENTATIVE PLANT: Yes.	2 SPEAKER OF THE HOUSE: Having received its
3	MADAM CHIEF CLERK: Mrs. Plant yes.	3 constitution majority vote Senate Bill 29 with House
4	Mrs. Schooley.	4 Amendment number 3 declared passed the House.
5	REPRESENTATIVE SCHOOLEY: Yes.	5
6	MADAM CHIEF CLERK: Mrs. Schooley yes.	6
7	Mr. Schwartzkopf.	7
8	REPRESENTATIVE SCHWARTZKOPF: Yes.	8
9	MADAM CHIEF CLERK: Mr. Schwartzkopf yes.	9
10	Mr. B. Short.	10
11	REPRESENTATIVE B. SHORT: Yes.	11
12	MADAM CHIEF CLERK: Mr. B. Short yes. Mr.	12
13	D. Short.	13
14	REPRESENTATIVE D. SHORT: Yes.	14
15	MADAM CHIEF CLERK: Mr. D. Short yes.	15
16	Mrs. Stone.	16
17	REPRESENTATIVE STONE: Yes.	17
18	MADAM CHIEF CLERK: Mrs. Stone yes.	18
19	Mrs. Thornburg.	19
20	REPRESENTATIVE THORNBURG: Yes.	20
21	MADAM CHIEF CLERK: Mrs. Thornburg yes.	21
22	Mr. Valihura.	22
23	REPRESENTATIVE VALIHURA: Yes.	23
24	MADAM CHIEF CLERK: Mr. Valihura yes.	24
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1	Mr. Viola.	1 State of Delaware      }
2	REPRESENTATIVE VIOLA: Yes.	2                              }
3	MADAM CHIEF CLERK: Mr. Viola yes.	3 County of New Castle      }
4	Mrs. Wagner.	4
5	REPRESENTATIVE WAGNER: Yes.	5
6	MADAM CHIEF CLERK: Mrs. Wagner yes.	6
7	Mr. Walls.	7 C E R T I F I C A T E
8	REPRESENTATIVE WALLS: Yes.	8
9	MADAM CHIEF CLERK: Mr. Walls yes.	9 I, Elaine G. Parrish, Registered Professional
10	Mr. Williams.	10 Reporter and Notary Public, do hereby certify that the
11	REPRESENTATIVE WILLIAMS: Yes.	11 foregoing record, pages 1 to 153 inclusive, is a
12	MADAM CHIEF CLERK: Mr. Williams yes.	12 transcript of my stenographic notes taken from an
13	Mr. Speaker.	13 audiotape in the above-captioned matter.
14	SPEAKER OF THE HOUSE: Yes.	14 IN WITNESS WHEREOF, I have hereunto set my
15	MADAM CHIEF CLERK: Mr. Speaker yes.	15 hand and seal this 17th day of September, 2007, at
16	SPEAKER OF THE HOUSE: Representative	16 Wilmington.
17	Lavelle.	17
18	REPRESENTATIVE LAVELLE: Thank you,	18
19	Mr. Speaker. Voting yes.	19
20	MADAM CHIEF CLERK: Mr. Lavelle from not	20
21	voting to yes.	21
22	SPEAKER OF THE HOUSE: Representative	22
23	Cathcart.	23
24	MADAM CHIEF CLERK: Mr. Speaker, the roll	24

39 (Pages 150 to 153)



**In The Matter Of:**

# **House Judiciary Committee of Delaware**

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**Audiotaped Hearing - Act to amend Title 10 of the Delaware  
Code**

**Senate Bill 29**

**June 19, 2007**

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**DELAWARE 2007 SESSION LAWS**  
**FIRST REGULAR SESSION OF THE 144TH GENERAL ASSEMBLY**

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Additions and deletions are not identified in this document.

Ch. 102  
 S.B. No. 29  
 COURTS--CHILD ABUSE--STATUTE OF LIMITATIONS

AN ACT TO AMEND TITLE 10 OF THE DELAWARE CODE BY REMOVING THE STATUTE OF LIMITATIONS FOR CIVIL SUITS RELATING TO CHILD SEXUAL ABUSE AND ADDING RELATED PROVISIONS REGARDING SUCH SUITS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Title 10 of the Delaware Code is hereby amended by adding to Chapter 81 a new Section 8145 which shall read as follows:

<< DE ST TI 10 § 8145 >>

"§ 8145. Civil suits for damages based upon sexual abuse of a minor by an adult.

(a) A cause of action based upon the sexual abuse of a minor by an adult may be filed in the Superior Court of this State at any time following the commission of the act or acts that constituted the sexual abuse. A civil cause of action for sexual abuse of a minor shall be based upon sexual acts that would constitute a criminal offense under the Delaware Code.

(b) For a period of two years following the effective date of this bill, victims of child sexual abuse that occurred in this State who have been barred from filing suit against their abusers by virtue of the expiration of the former civil statute of limitations, shall be permitted to file those claims in the Superior Court of this State. If the person committing the act of sexual abuse against a minor was employed by an institution, agency, firm, business, corporation, or other public or private legal entity that owned a duty of care to the victim, or the accused and the minor were engaged in some activity over which the legal entity had some degree of responsibility or control, damages against the legal entity shall be awarded under this subsection only if there is a finding of gross negligence on the part of the legal entity

(c) A person against whom a suit is filed may recover attorney's fees where the Court determines that a false accusation was made with no basis in fact and with malicious intent. A verdict in favor of the accused shall not be the sole basis for a determination that an accusation was false. The Court must make an independent finding of an improper motive to award attorneys' fees under this section."

Section 2. This bill shall be known as the "Child Victim's Act".

Section 3. If any provision of this act or the applications thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the act which shall be given effect without the invalid provision or application; and, to that end, the provisions of this act are declared to be severable.

Section 4. This Act shall become effective upon the specific appropriation of funds for such purposes in the Annual Appropriations Act.

Approved July 10, 2007.

DE LEGIS 102 (2007)

END OF DOCUMENT



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## Governor Ruth Ann Minner

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Tuesday, July 10, 2007

### Governor Minner Signs Senate Bill 29

Dover – Today Governor Ruth Ann Minner signed Senate Bill 29, legislation that amends Title 10 of the Delaware Code by removing the statute of limitations for civil suits relating to child sexual abuse. The bill, sponsored by Senator Karen Peterson, Senator David McBride, Representative Deborah Hudson, and Representative Greg Lavelle, also provides a two-year window in which victims can bring a civil action in cases previously barred by the current statute.

“Ever since we passed Megan’s Law in 1998, we’ve been working to refine and strengthen Delaware’s laws relating to sex offenders,” said Governor Ruth Ann Minner. “Sexual predators that victimize children are learning that Delaware is not going to tolerate their horrendous crimes against the children of our state. I applaud the efforts of Senator Peterson and all of the co-sponsors for taking the lead on passing this vitally important legislation.”

This legislation changes the statute of limitations, which is currently two years, so that going forward there will no longer be a statute of limitations for a cause of action based upon the sexual abuse of a minor. Additionally, SB 29 provides that victims of child sexual abuse, who are barred from filing a law suit against their abuser due to the expiration of a statute of limitation, can file a claim in Superior Court for a period of two years.

“Rep. Deborah Hudson and I are proud to have played a role in getting this landmark legislation passed,” said Senator Karen Peterson, the bill’s author and primary sponsor. “As a result of its passage, Delaware’s children are safer, child sexual abuse victims can finally get justice, and those who molest children will find that they no longer have a safe haven in Delaware.”

Last Updated: Wednesday, 25-Jul-2007 13:08:12 EDT

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To... Hear...

ROBERT J. VALIHURA, JR.  
STATE REPRESENTATIVE  
Tenth District



HOUSE OF REPRESENTATIVES  
STATE OF DELAWARE  
LEGISLATIVE HALL  
DOVER, DELAWARE 19901

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Economic Development, Banking & Insurance  
Housing & Community Affairs

COMMITTEE MEETING MINUTES  
Judiciary Committee  
May 10, 2007

Representative Valihura called the meeting to order at 11:40AM. Members in attendance were Rep. Hudson, Rep. Johnson, Rep. Marshall, Rep. Lavelle, Rep. Wagner, and Rep. Mitchell. Please see attached attendance sheets for all other present.

Rep. Valihura announced that this meeting was a special hearing for **SB29, RELATING TO CHILD SEXUAL ABUSE AND ADDING RELATED PROVISIONS REGARDING SUCH SUITS (Sponsor: Peterson)**. He then had the committee members present themselves to the public and introduced Senator Peterson and Rep. Hudson, the prime sponsors of the bill.

Rep. Hudson, the prime sponsor of the bill in the House, stated that the purpose of the legislation is to look after children who have been victims of sexual abuse. She stated that the bill would not only protect children, but would also take care of adults who suffered sexual abuse in their childhoods. She explained that the bill is entitled the Child Victims Act and has three main objectives: repealing the two-year statute of limitations in bringing suits against child sex abusers, providing a look-back period of two years from the date of enactment in which victims can sue their abusers and the legal entity that enabled the abuse to happen, and allows a person or entity who is falsely and maliciously accused of abuse to obtain attorney fees from the accuser.

Rep. Hudson then stated that one in five children are sexually abused and provided some additional statistics regarding child sex abuse. She stated that the average age a child is abused is nine and that 1/3 of all rapes in the Untied States are committed against girls under 11 years old. She also stated that the abuse is rarely a one-time occurrence and the average time of abuse is 4 years. She then stated that 85% of molestations involve a family member or close family friend and only 10% are committed by clergy or teachers. She stated that the average child molester will abuse 3-12 children in his or her lifetime, averaging 70-71 molestations per child. She stated that child sex abuse is a very serious problem in Delaware and that the purpose of the legislation is to help victims of child sexual abuse and nothing else.

Rep. Valihura stated that he had a few technical questions regarding the bill. He stated that it differs from last year's bill and asked why the statute of limitations was repealed entirely while it was only extended last year. Senator Peterson responded that in the

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original draft of last year's bill, there was no statute of limitation. She stated that when she combined her bill with the similar one proposed by Rep. Lavelle into HB450, a compromise was made but that the original intent was to have no statute of limitations at all. Rep. Lavelle responded that in HB450, the statute of limitation became age of maturation plus 25 years. He stated that the American Psychological Association found that most people would be ready and able to file suits against their abusers by that time. Sen. Peterson added that the original bill was modeled after a Vermont bill and it also contained the look-back period.

Rep. Valihura asked what the reasoning was for doing away with the statute of limitation period entirely. Sen. Peterson responded that she has been in contact with many victims over the age of 43 (which would have been the effective final age to file suit) and their lives have been completely destroyed and they still suffer from the abuse so there should be no outer limit. She stated that HB66 was passed unanimously a few years ago to repeal the statute of limitation for filing a criminal claim against an abuser and that the civil remedy should be consistent. Rep. Valihura asked if there are any other civil remedies that have no statute of limitations. Sen. Peterson responded that she is not aware of any. Rep. Hudson stated that to set a date when a victim can no longer sue is wrong and arbitrary. She stated that this abuse hurts so many people and feels that there should be no barrier to suing.

Rep. Lavelle brought up the \$18 million fiscal note attached to last year's bill and stated that it is unlikely that they will be able to find the money to fund this. Rep. Hudson responded that she has a copy of the fiscal note dated 6/27/06 and it says the total cost would be \$200,000, not \$18 million. Rep. Lavelle responded that the fiscal note she is referring to was on the substitute bill, not the original HB450. Sen. Peterson added that she went to find what was included in the \$18M fiscal note and no one in the Controller General's Office could verify it and the figure was just a phantom number. She stated that the \$200,000 fiscal note included the purchase of insurance by the state. Rep. Lavelle stated that school districts in the state have come to him to say that they do not have the money to purchase insurance.

Rep. Valihura also had a question about the length of the look-back provision and asked why two years was decided to be the most appropriate. Rep. Hudson responded that some of the bill's supporters wanted to make it 5 years and they compromised to 2 years to meet the needs of the victims and be reasonable. Rep. Valihura asked if any other states have a look-back provision. Rep. Hudson responded that Illinois is considering it and California currently has a one year period. She stated that 2-year period is what is right for Delaware and they do not need a track record from other states to prove it.

Rep. Valihura then asked a question about Subsection B, sentence 2. He asked if their intent to have that section only apply to the suits initiated during the look-back period or all sexual abuse suits. Sen. Peterson responded that they only intended the ability to sue an outside entity to be applicable to cases brought from the look-back period.

After the committee was finished with their questions, Rep. Valihura opened the meeting up to members of the public who wanted to speak on the bill. Nelson Lamb was the first person to speak in support of the bill. Please see his attached testimony.

The next person to speak in support of the bill was Valerie Marek, Executive Director of SOAR (Survivors of Abuse And Recovery). Kay Preston of SOAR also spoke in support. Please see their attached testimony.

Rob Quill, a survivor of childhood sexual abuse, was the next to speak in support of the bill. Please see his attached testimony.

Jean Lange, a survivor of childhood sexual abuse, spoke next in support of the bill. Please see her attached testimony.

The Honorable Vincent Bifferato, Chairman of the Catholic Diocese Review Board, was the next to speak. He stated that he supports the bill, but believes that the government immunity must be abolished. He stated that he served on the Delaware Superior Court for 32 years and that consistency is one of the most important factors in the administration of justice. He further said that doing away with statute of limitations reduces consistency. He also stated that some claims are just too old to be brought to trial and that the burden of proof would be very difficult to establish in the old cases. Rep. Hudson asked if the statute of limitations has ever been waived. He stated that he was not aware of a specific instance and that he does not have a problem with the statute of limitations being extended, but does not believe it should be done away with completely. Senator Peterson asked if he opposed the repeal of the statute of limitations in criminal charges. He stated that his problem with it is that if the abuser's employers or organization are sued, they must defend these cases even though they may not have the appropriate records. He stated that the basic problem is consistency and that it will be impossible to prove these cases. Sen. Peterson stated that the burden of proof is on the accuser and that this bill just opens the door for suits, it does not guarantee they will be successful. She also stated that county law requires the Catholic Church to keep such records and that in California which has a one-year look back period, 99% of the suits were brought against the Catholic Church,

Rep. Lavelle asked if someone is found guilty of child sex abuse in the civil proceedings, will he or she have to register as a sex offender even if there were no criminal charges. The Honorable Vincent Bifferato stated that he is not sure, but believes that they should. Rep. Hudson asked who he was representing today. He stated that he is speaking as chairman of the Catholic Diocese Review Board and that he wants to see government immunity removed as to better protect all children. Sen. Peterson asked if the Diocese supports the bill and he responded that he is not speaking on the entire bill, just House Amendment 2.

Rep. Lavelle, the sponsor of the amendment, explained that HA2 confirms that the state is not immune from liability. He stated that the state should have the same full responsibility as any other entity does in protecting children. He stated that the purpose of

the amendment is to make it very clear that state immunity is waived so the point cannot be argued by lawyers. He stated that the state is an equal and full partner in the protection of children and that more children are under the care of the state on any given day than any other entity. Rep. Hudson agreed that the state should not be immune from liability and asked a representative of the Attorney General's Office to discuss the amendment.

Larry Lewis of the Attorney General's Office explained that as of now, state entities would be offered sovereign immunity which is a constitutional protection. He stated that states would be able to raise sovereign immunity as long as gross negligence was not involved on their part. He stated that the amendment would abolish the possibility of both sovereign and qualified immunity altogether in these cases. Rep. Marshall asked if the waiver of immunity except in cases of gross negligence only applies to the look-back period. Mr. Lewis responded that he believes so, but it is for the state solicitor to interpret. Sen. Peterson stated that the proposed amendment would waive sovereign immunity for the entire bill, not just the look-back period. She stated that state employees lose their right to sovereign immunity at the point of gross negligence. She stated that state employees already have sovereign immunity in other tort remedies and they are not taking defenses away from the other entities, so they do not want to take it away for the state. She stated that if the amendment passed, the state would be responsible for the school district's gross negligence which she believes would inflate the fiscal note and could kill the bill. Rep. Lavelle responded that it was not his intent to inflate the fiscal note and just wants equal liability for public and private entities. He stated that going forward without the amendment would allow the state to have a defense that private entities do not enjoy. Mr. Lewis stated that this is disparity under current law.

Rep. Johnson asked if the amendment was friendly. Sen. Peterson responded that in her opinion it is intended to kill the bill by removing sovereign immunity for this tort and not every other one. Rep. Lavelle disagreed and stated that he takes offense at her suggestion. He stated that he believes everyone should be treated the same because the egregious nature of the offense and that state employees should not receive any sort of immunity. Rep. Valihura stated that all members of the General Assembly are working in good faith and no one would intentionally sabotage a bill. He stated that Rep. Lavelle has only the best of intentions with his amendment. Rep. Lavelle stated that he has been consistent on this issue since last year.

Sen. Peterson asked Jeff Clark, the chief Senate attorney who wrote the bill, to explain if state employees can be sued both from the look-back period and in the future. Mr. Clark responded that yes, if certain conditions are met, sovereign immunity can be waived as the bill currently reads in both suits from the look-back period and future suits. He stated that sovereign immunity is a well-embedded concept and you may want a separate bill to address that issue. Rep. Valihura asked what the intention was to allow the entities to be sued. Sen. Peterson responded that the abuser may be long gone or unable to pay so the entity that was grossly negligent and enabled the abuse to happen should be held responsible so the victim can receive the appropriate compensation.

Reverend John Hynes, pastor at the St. Catherine of Siena Catholic Church, spoke on the bill next. Please see attached for his testimony. Rep. Marshall asked him to explain what would happen to a Catholic school that was successfully sued. Rev. Hynes explained that most of the suits are brought against the Diocese that runs the school and they would be forced to find the money to pay the damages by selling off assets like schools and churches. Sen. Peterson pointed out that other Dioceses in the country had to declare bankruptcy in order to pay damages, but only did it to protect the assets and were able to come out of bankruptcy fairly quickly. She asked Rev. Hynes to discuss how the Diocese of Boston dealt with paying damages since they had the biggest judgment against them. Rev. Hynes stated that he does not know as he is only speaking as a local priest. He stated that the \$41 million payout is a large sum that would require many assets to be sold off. He stated that no amount of damages is going to heal the wounds of the accuser and that the Church runs off volunteered contributions and cannot afford such huge sums. Sen. Peterson responded that not one school or church had to be closed in Boston as a direct result of the pay-out. She stated that the reason schools had to be closed was because Catholics in the area were disgusted with the actions of the Diocese and boycotted collection. She stated that the declared bankruptcies of other Dioceses were bogus and intended to protect the church assets; they were not true Chapter 7 Indigent claims. Rev. Hynes responded that he sees justice as restoring what was taken away from someone while others may see it as a dollar amount. Sen. Peterson asked what if your livelihood was taken away as Rob Quill's was, doesn't the church owe him something?

The next person to speak in support of the bill was Christine Geisler. She stated that she was sexually abused on a daily basis between the ages of 6 and 9. She stated that she waited six years to tell anyone about the abuse and bring charges and there was still plenty of evidence to convict her abuser. She stated that no amount of money will help her, but it may help someone else. She stated that this bill is about punishing the abusers and that they should not be protected. She stated that the perpetrators are not worried about being caught and too many children are sexually abused as a result. She stated that this bill would allow for increased accountability and hopefully prevent abusers from hurting more people.

The next person to speak in support of the bill was Polli Funk, the Public Policy Director of ContactLifeline, Inc. She read a letter of support for the bill which is attached.

The final member of the public to speak in support of the bill was Susan Day, another survivor of childhood sexual abuse. Please see her attached testimony.

Since not everyone who signed up to speak had a chance to, Rep. Valihura stated that there would be another hearing held on the bill before it is voted on. He ensured the public that everyone who wishes to speak would be afforded the opportunity and that there would be adequate public notice. Rep. Valihura adjourned the meeting at 2:00PM.

Respectfully Submitted By,  
  
 Renee Bartuccio

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**CERTIFICATE OF SERVICE**

I, Stephen J. Neuberger, being a member of the bar of this Court do hereby certify that on October 16, 2007, I electronically filed this **Pleading** with the Clerk of the Court using CM/ECF which will send notification of such filing to the following:

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